

Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

**Board of Directors**

Ward 1 – Keith Lau

Ward 2 – Andre’ Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

# **AGENDA**

## **Fort Smith Board of Directors**

### **Regular Meeting**

**November 19, 2013 ~ 6:00 P.M.**

**Fort Smith Public Schools Service Center**

**3205 Jenny Lind Road**

***THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 6***

#### **INVOCATION & PLEDGE OF ALLEGIANCE**

#### **ROLL CALL**

#### **PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING**

*(Section 2-37 of Ordinance No. 24-10)*

#### **APPROVE MINUTES OF THE NOVEMBER 5, 2013 REGULAR MEETING**

#### **ITEMS OF BUSINESS:**

1. Public hearing and ordinance authorizing the issuance of taxable industrial development revenue bonds under the authority of Act No. 9 of 1960, as amended, for the purpose of securing and developing industry within the city; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a trust indenture securing the bonds; authorizing the execution and delivery of a lease agreement between the city, as lessor, and Gerber Products Company, as lessee; authorizing the execution and delivery of an agreement for payments in lieu of taxes; authorizing the execution and delivery of other documents relating to the issuance of the bonds and prescribing other matters relating thereto; and declaring and emergency
2. Public hearing and ordinance certifying to the Sebastian County Tax Collector delinquent property cleanup liens
3. Ordinance amending Section 16-15 of the Fort Smith Municipal Code changing the annual cutoff date for consideration of appeal for delinquent property cleanup liens

4. Ordinance amending Section 2-26 of the Fort Smith Municipal Code setting the dates, time and location for regular meetings of the Board of Directors for the year 2014 ~ *Settle/Lorenz placed on agenda at the November 12, 2013 study session ~*
5. Resolution authorizing partial payment to Archer Western Construction, LLC for the construction of the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$973,415.65 / *Utility Department / Budgeted – 2012 Sales and Use Tax Bonds*)

**OFFICIALS FORUM ~ presentation of information requiring no official action**  
*(Section 2-36 of Ordinance No. 24-10)*

- Mayor
- Directors
- City Administrator

**EXECUTIVE SESSION**

Appointments: Fort Smith Municipal Employees Benevolent Fund Board of Advisors (1) and Oak Cemetery Commission (3)

**ADJOURN**

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE AUTHORITY OF ACT NO. 9 OF 1960, AS AMENDED, FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND GERBER PRODUCTS COMPANY, AS LESSEE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS RELATING TO THE ISSUANCE OF THE BONDS AND PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Fort Smith, Arkansas (the “City”) is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated (1998 Repl. & 2013 Supp.) Sections 14-164-201 *et seq.* (the “Act”), to own, acquire, construct, reconstruct, improve, equip and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, pursuant to the authority of the Act, the City has previously issued its not to exceed \$65,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2004 (the “Prior Bonds”), in order to assist Gerber Products Company, a Michigan corporation (the “Company”), in the financing of a substantial industrial project located within the corporate boundaries of the City; and

**WHEREAS**, the City, pursuant to Resolution No. R-149-10 adopted on August 3, 2010, as amended by Resolution No. R-81-13 adopted on June 4, 2013, the City has previously expressed its intent to issue its industrial development revenue bonds under the Act for the purposes hereinafter described for the benefit of the Company, such bonds to be issued as described below; and

**WHEREAS**, the necessary arrangements have been made with the Company for the financing of an additional industrial project consisting of the acquisition, construction and equipping of additional manufacturing facilities (the “Project”) to be located at the site of the Company’s existing facilities at 4301 Harriet Lane within the corporate boundaries of the City and to be utilized in the Company’s infant and toddler foods production and packaging business; and

**WHEREAS**, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City pursuant to the Act through the issuance of its Taxable Industrial Development Revenue Bonds, Series 2013, in the principal amount of not to exceed One Hundred Fifty Million Dollars (\$150,000,000) (the “Bonds”); and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Board of Directors on November 19, 2013, following publication of notice in the *Southwest Times Record* on November 8, 2013; and

**WHEREAS**, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture dated as of December 1, 2013 (the “Indenture”), by and between the City and The Bank of New York Mellon Trust Company , N.A., as trustee (the “Trustee”); and

**WHEREAS**, the necessary arrangements have been made by the City to lease the Project to the Company pursuant to the terms of a Lease Agreement dated as of December 1, 2013 (the “Lease Agreement”);

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:**

Section 1. The Board of Directors makes the following findings and determinations:

(a) Based on information compiled and released by the Arkansas Employment Security Department, unemployment in the Fort Smith Metropolitan Statistical Area (MSA) during July of 2013 averaged 7.6%. Completion of the Project is expected to ensure additional employment and other benefits to residents of the City.

(b) The Company currently intends to utilize the Project in its infant and toddler foods manufacturing and packaging business.

(c) The Company’s continued presence within the City is expected to be an important factor in the economic well being and employment base for the City and its inhabitants.

(d) The Bonds shall not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but shall be special limited obligations of the City as provided in the Act, the principal and interest on which shall be payable solely from the revenues or other receipts, funds, monies and property pledged therefor under the Indenture.

Section 2. There is hereby authorized and directed the issuance from time to time of the Bonds and the sale thereof to Nestle Capital Corporation or another affiliate of the Company (the “Purchaser”) pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of delivery of the Bonds (the “Bond Purchase Agreement”), which Bond Purchase Agreement is specifically approved in Section 3 hereof. The Bonds shall be sold at the purchase price of par plus accrued interest, if any, and shall be issued and delivered according to the terms and provisions of the Bond Purchase Agreement. The Bonds shall be issued in the original aggregate principal amount of not to exceed One Hundred Fifty Million Dollars (\$150,000,000), shall be dated as of the date of their delivery, shall have a final maturity of December 1, 2024, shall

bear interest at the rate of 5.85% per annum, shall be in the form, and shall be issued upon the terms and conditions recommended by the Company, all as more particularly set forth in the Trust Indenture approved in Section 4 hereof. The Mayor is hereby authorized and directed to execute and deliver the Bonds from time to time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be authenticated by the Trustee.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be sold to the Purchaser, the Mayor is hereby authorized and directed to execute at the request of the Company the Bond Purchase Agreement on behalf of the City, by and between the City and the Purchaser, and approved by the Company. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Purchaser, the Company and Kutak Rock LLP, Little Rock, Arkansas (“Bond Counsel”), in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. To prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Trust Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Trustee, the Company, the Purchaser and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. There is hereby authorized and directed the execution and delivery of the Lease Agreement by and between the City, as lessor, and the Company, as lessee, and the Mayor and the City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company, the Trustee, the Purchaser and Bond Counsel in order to complete the Lease Agreement in substantially the form submitted to this

meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Lease Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. The City and the Company recognize that under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to the Act, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), the Project will be exempt from *ad valorem* taxation. Although the City makes no representation as to the continued precedential value of such past decisions, the Company has agreed to enter into an Agreement for Payments in Lieu of Taxes to be dated as of the date of its execution (the “PILOT Agreement”) requiring the Company to make certain payments in lieu of all *ad valorem* taxes which would otherwise be levied on the Project real and personal property by local public bodies with taxing power. In order to provide for such payments, there is hereby authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company and Bond Counsel in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the PILOT Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the Bond Purchase Agreement, the Trust Indenture, the Lease Agreement and the PILOT Agreement, and to perform all of the City’s obligations under and pursuant thereto. The Mayor and the City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 8. Because the City is here involved with the expansion, renovation and equipping of a complex industrial project requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the Board of Directors that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 9. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bonds or by the Company.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. There is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, retain existing employment, alleviate unemployment, and otherwise benefit the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other actions authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public health, safety and welfare shall be in force and take effect immediately upon and after its passage.

ADOPTED: \_\_\_\_\_, 2013.

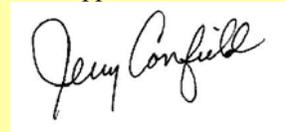
\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(S E A L)

Approved as to Form:



\_\_\_\_\_  
City Attorney

**CITY OF FORT SMITH, ARKANSAS**  
Issuer  
  
and  
  
**NESTLE CAPITAL CORPORATION**  
Purchaser

---

**BOND PURCHASE AGREEMENT**

---

Dated December \_\_, 2013

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

## BOND PURCHASE AGREEMENT

Not to Exceed \$150,000,000  
 City of Fort Smith, Arkansas  
 Taxable Industrial Development Revenue Bonds  
 (Gerber Products Company Project)  
 Series 2013

December \_\_, 2013

Nestle Capital Corporation  
 Attn: Treasurer – 12<sup>th</sup> Floor  
 800 N. Brand Blvd.  
 Glendale, CA 91203

Ladies and Gentlemen:

The City of Fort Smith, Arkansas (the “Issuer”), a political subdivision organized and existing under the laws of the State of Arkansas, hereby agrees with you as follows:

### SECTION 1

#### PURCHASE AND SALE OF BONDS

**1.1. Issuance of Bonds.** The Issuer has authorized the issuance of its Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, in aggregate principal amount of not to exceed \$150,000,000 (the “Bonds”), pursuant to and in accordance with Amendment 65 to the Constitution of the State of Arkansas (“Amendment 65”), Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, as amended (“Act 9”), and an Ordinance of the Issuer (the “Ordinance”), duly adopted by its City Board of Directors on November \_\_, 2013, such Bonds to be dated, to bear interest and to be payable as set forth in, and to be issued pursuant to the terms of, a Trust Indenture dated as of December 1, 2013, by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) (the “Indenture”). The Bonds shall be issued as a single typewritten drawdown bond with a stated principal of \$150,000,000; provided, however, that the principal amount due thereon shall be only such amount as has been drawn by the Company (as defined below) as reflected on the Schedule of Draws and Redemptions attached to the Bonds. The Bonds shall bear interest on the principal amount drawn by the Company at the rate of [5.85]% per annum, payable annually on December 1, commencing December 1, 2014. The Bonds will mature on December 1, 20\_\_ . The proceeds from the sale of the Bonds shall be applied to acquire, construct and equip certain industrial facilities (the “Project”) within the corporate boundaries of the Issuer (or to reimburse the Company for said costs). The Issuer shall lease the Project to Gerber Products Company, a

Michigan corporation (the “Company”), pursuant to the terms of a Lease Agreement dated as of December 1, 2013 (the “Lease Agreement”). The Bonds will be secured by (i) the assignment by the Issuer to the Trustee for the benefit of the owner(s) of the Bonds of the rights of the Issuer under the Lease Agreement, and (ii) such other funds and accounts as are described in the Indenture.

**1.2. Closing.** The Issuer hereby agrees to sell to you and, subject to the terms and conditions herein set forth, you hereby agree to purchase from the Issuer, from time to time, all or any portion of the Bonds at 100% of the principal amount drawn by the Company pursuant to a Draw Certificate as provided in the Indenture. The closing of the initial purchase of the Bonds shall be at 10:00 A.M. local time, on December \_\_, 2013 (the “Closing Date”), at the offices of Kutak Rock LLP, 124 West Capitol Avenue, Suite 2000, Little Rock, Arkansas 72201, or at such other time and place as shall be subsequently agreed upon by the parties. At the initial closing and upon each subsequent draw, the Company will deliver a duly executed Draw Certificate to the Trustee on behalf of the Issuer, you will deliver to the Trustee, in immediately available funds, the principal amount specified in the Draw Certificate, and the Trustee will deliver to the Company or its order, in immediately available funds, the principal amount specified in the Draw Certificate.

## SECTION 2

### WARRANTIES, REPRESENTATIONS AND AGREEMENTS OF THE ISSUER

The Issuer warrants, represents and agrees that:

**2.1. Organization and Authority.** The Issuer is a duly organized and validly existing political subdivision of the State of Arkansas and has all requisite power and authority under Amendment 65 and Act 9 to issue, sell and deliver the Bonds as provided herein and to consummate all other transactions involving the Issuer contemplated by this Bond Purchase Agreement (this “Agreement”).

**2.2. Pending Litigation.** There is no action, suit, proceeding or investigation pending or threatened against or affecting the Issuer, or, to the best knowledge of the Issuer, any basis therefor, wherein an unfavorable decision or finding would adversely affect the transactions contemplated by this Agreement, or which in any way would adversely affect the validity or enforceability of the Bonds, this Agreement, the Lease Agreement, the Indenture or the PILOT Agreement (as hereinafter defined).

**2.3. Sale and Other Transactions are Legal and Authorized.** The sale of the Bonds, the execution, delivery and due performance of this Agreement, the Lease Agreement, the Indenture and the PILOT Agreement, and all transactions contemplated by this Agreement are within the purposes, powers and authority of the Issuer, and have been done in full compliance with the provisions of the Ordinance, Amendment 65 and Act 9, as applicable, and all other applicable laws of the State of Arkansas. When delivered to you in accordance with this Agreement, the Bonds being purchased by you hereunder will be duly authorized, executed, issued and delivered and will constitute the legal, valid and binding obligation of the Issuer

payable solely from the revenues and other funds pledged in the Indenture therefor, and the owner(s) of the Bonds and their assigns will be entitled to the benefits of this Agreement, the Lease Agreement and the Indenture.

**2.4. Governmental Consents.** All consents, approvals, authorizations and orders of, or filings, registrations or qualifications with, any governmental or regulatory authorities which are required to be obtained by the Issuer for the consummation of the transactions contemplated by this Agreement have been duly and validly obtained or performed and are in full force and effect.

**2.5. Use of Proceeds for Public Purposes.** The Issuer has determined that the Project and the use of the proceeds from the sale of the Bonds therefor will accomplish the public purposes set forth in Act 9.

### SECTION 3

#### CONDITIONS OF CLOSING

Your obligation to purchase and pay for the Bonds to be delivered to you on the Closing Date and on the dates of any subsequent draws thereunder shall be subject to the following conditions precedent:

**3.1. Opinion of Counsel.** Your receipt from Kutak Rock LLP, bond counsel, of an approving opinion satisfactory to you.

**3.2. Warranties and Representations True as of the Closing Date.** You shall not have received notice from the Issuer that any of the warranties and representations of the Issuer contained in Section 2 hereof shall be untrue in any material respect as of the Closing Date or as of the date of any subsequent draw; there shall exist no “event of default” (as defined in the Lease Agreement and Indenture) on such date; and you shall have received a certificate of the Company to such effect.

**3.3. Execution and Delivery of Documents.** The Lease Agreement, the Indenture and an Agreement for Payment in Lieu of Taxes to be dated as of the date of its delivery (the “PILOT Agreement”), by and between the Issuer and the Company, shall each have been duly executed and delivered by the respective parties thereto, and each shall be in full force and effect on the Closing Date, and on the date of each subsequent draw under the Bonds.

**3.4. Filings.** All recordations and filings appropriate or required by law in order fully to perfect, preserve and protect the assignment of the Lease Agreement and the lien of the Indenture and the security interests created by the Lease Agreement and the Indenture and the rights of the Trustee thereunder shall have been performed.

**3.5. Proceedings Satisfactory.** All corporate and other proceedings taken or to be taken in connection with the transactions relating hereto and all documents incident thereto shall be satisfactory in substance and form to you and your counsel, and you and your counsel shall have received such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

**3.6. No Litigation.** No litigation or proceeding shall be threatened or pending in any court or other official body (i) to restrain or enjoin the issuance or delivery of the Bonds, (ii) which in any way questions or affects the validity of the Bonds, any provisions thereof, any provisions of the Ordinance, this Agreement, the Lease Agreement, the Indenture, the PILOT Agreement or any proceedings taken with respect to the foregoing, or (iii) which questions the Issuer's creation, organization or existence or the titles to office of any of its officers, or its powers to acquire, finance and lease the Project.

## SECTION 4

### SPECIAL COVENANTS

**4.1. Delivery Expenses.** Payment of all costs of issuance in connection with the preparation, execution, printing and delivery of the Bonds to the place of closing and all fees and expenses of Bond Counsel and your counsel shall be paid, or caused to be paid, from the proceeds of the Bonds or otherwise at the election of the Company.

**4.2. Special Obligations.** Notwithstanding anything herein to the contrary, all covenants and agreements contained in this Agreement on behalf of the Issuer shall be subject to the provisions of this Section 4.2. The Bonds shall be special limited obligations of the Issuer as provided in Act 9, the principal of and interest on which are payable solely from revenues or other receipts, funds, monies and property pledged or mortgaged therefor under the Indenture, and any amounts payable by the Issuer under this Agreement, the Lease Agreement or the Indenture are payable solely therefrom. Neither the State of Arkansas nor any political subdivision thereof shall in any event be liable for the payment of the principal of or interest on the Bonds.

## SECTION 5

### MISCELLANEOUS

**5.1. Expenses.** The Company shall pay and indemnify the Issuer for the amount of all expenses reasonably incurred in connection with the issuance of the Bonds and not otherwise paid from Bond proceeds.

**5.2. Notices.** All communications provided for hereunder shall be sent by fax or by first class or certified mail and, if to you, addressed to you in the manner in which this letter is addressed; if to the Issuer, at P.O. Box 1908, Fort Smith, Arkansas 72903, Attention: Mayor; and if to the Company, to Nestle Capital Corporation, 800 N. Brand Blvd., Glendale, CA 91203, Attention: Treasurer – 12<sup>th</sup> Floor, or to such other address with respect to any party as such party shall notify the others in writing.

**5.3. Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by the Issuer in connection herewith shall survive the execution and delivery of this Agreement and the Bonds.

**5.4. Successors and Assigns.** All covenants and agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the

respective successors and assigns of the parties hereto whether so expressed or not. The provisions of this Agreement are intended to be for the benefit of all owner(s) from time to time of the Bonds, and shall be enforceable by any such owner, whether or not an express assignment to such owner of rights under this Agreement has been made by you or your successors or assigns. You may not assign any portion of your rights and obligations hereunder without the written consent of the Issuer and the Company.

**5.5. Responsibility of Individuals.** All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any director, officer, employee or agent of the Issuer in his or her individual capacity.

**5.6. Satisfaction Requirement.** If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to you, the determination of such satisfaction shall be made by you in your sole and exclusive judgment exercised in good faith.

**5.7. Representation of Purchaser.** You specifically understand and agree that, prior to the sale of the Bonds to you, you will be required to execute and deliver a letter in substantially the form attached hereto as Exhibit A. You further understand and acknowledge that your obligation under Section 1.2 hereof to purchase from time to time an amount of the Bonds up to the entire authorized principal amount will survive and be unaffected by any transfer or purported transfer by you of any interest in the Bonds.

**5.8. Governing Law.** This Agreement is being delivered and is intended to be performed in the State of Arkansas, and shall be construed and enforced in accordance with the laws of such State.

**5.9. Modifications.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**5.10. Descriptive Headings.** The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**5.11. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

If you are in agreement with the foregoing, please sign the form of acceptance on the enclosed counterpart of this document and return the same to the undersigned, whereupon this shall become a binding agreement between you and the undersigned.

Very truly yours,

**CITY OF FORT SMITH, ARKANSAS**

By: \_\_\_\_\_  
Mayor

ACCEPTED:

**NESTLE CAPITAL CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_  
Title:

APPROVED:

**GERBER PRODUCTS COMPANY,**  
a Michigan corporation

By: \_\_\_\_\_  
Title:

[SIGNATURE PAGE TO BOND PURCHASE AGREEMENT]

**EXHIBIT A**  
**FORM OF INVESTOR LETTER**

[PREPARED ON LETTERHEAD OF BOND PURCHASER]

December \_\_, 2013

Kutak Rock LLP  
124 West Capitol Avenue  
Suite 2000  
Little Rock, AR 72201

City of Fort Smith, Arkansas  
P.O. Box 1908  
Fort Smith, AR 72903  
Attn.: Mayor

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38<sup>th</sup> Floor  
Pittsburgh, PA 15259  
Attn: Kerry S. Zombeck, Vice President

Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932  
Attn: \_\_\_\_\_

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

Ladies and Gentlemen:

In connection with the purchase by us of the above-described bonds (the “Bonds”), we hereby certify as follows:

1. We understand that we will not receive from the City of Fort Smith, Arkansas (the “Issuer”), Gerber Products Company (the “Company”), JPMorgan Chase Bank, N.A. (the “Trustee”), their governing bodies, their members or any of their officers, employees or agents or Kutak Rock LLP (“Bond Counsel”) any information with respect to the use of the proceeds of the Bonds and the Project, as defined in the Trust Indenture dated as of December 1, 2013 (the “Indenture”), the Bonds themselves, the provisions for payment thereof, the security therefor or the sufficiency of such

provisions for payment thereof and security therefor, except (a) in the documentation executed in connection with the issuance of the Bonds, copies of which have been provided to us and reviewed by us prior to our purchase of the Bonds (the “Bond Documents”), and (b) as has been specifically requested by us from the Company and which has been provided to us and reviewed by us prior to our purchase of the Bonds (the “Additional Information”).

2. Neither the Issuer, the Company, the Trustee, their governing bodies, their members nor any of their officers, employees or agents nor Bond Counsel will have any responsibility to us for the accuracy or completeness of information obtained by us from any source regarding the Project, the Issuer, the Company or its assets, business, circumstances, financial condition and properties, or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Bond Documents. We acknowledge that, as between us and all of such parties: (a) we have assumed responsibility for obtaining such information and making such review as we have deemed necessary or desirable in connection with our decision to purchase the Bonds, and (b) the Bond Documents and the Additional Information constitute all the information and, with the investigation made by us (including specifically our investigation of the Company and the Project) prior to our purchase of the Bonds, review that we have deemed necessary or desirable in connection with our decision to purchase the Bonds.

3. We have been offered copies of or full access to all documents relating to the issuance of the Bonds and all records, reports, financial statements and other information concerning the Issuer, the Company and the Project and pertinent to the source of payment for the Bonds which we, as a reasonable investor, have requested and to which we, as a reasonable investor, would attach significance in making investment decisions. We have been afforded the opportunity to ask such questions of representatives of the Company as we have deemed necessary in making our investment decisions; and we have based our decision to invest in the Bonds solely on our own investigation, including, without limitation, our review of such documents, records, reports, financial statements and other information concerning the Company and the Project and discussions with representatives of the Company.

4. We are either (a) a bank, registered investment company, insurance company or other “accredited investor” as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, or (b) described in paragraph 5. If described in this paragraph 4, we are duly and validly organized under the laws of our jurisdiction of incorporation or organization, and we can bear the economic risk of the purchase of the Bonds and have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2. If I am a natural person described in this paragraph 4: (i) I have a net worth, or joint net worth with my spouse, of at least \$ 1,000,000, or (ii) I had an individual income in excess of \$200,000 in each of the two most recent years or joint income with my spouse in excess of \$300,000 in each

of those years and have a reasonable expectation of reaching the same income level in the current year.

5. If not described in paragraph 4, we are a registered investment advisor purchasing the Bonds for inclusion in the portfolio of a registered investment company advised by us and over whose transactions we have discretionary power. If described in this paragraph 5, we have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2, and the investment company for which we are purchasing the Bonds is duly and validly organized under the laws of its jurisdiction of incorporation or organization and can bear the economic risk of the purchase of the Bonds.

6. The Bonds have been purchased for our own account for investment and not with a view to the distribution, transfer or resale thereof, provided that the disposition of the Bonds shall at all times be within our sole control.

7. We are duly and legally authorized to purchase obligations such as the Bonds.

8. We have not and will not rely on any action taken by the Issuer of the Bonds, including, but not limited to, issuance of the Bonds, as evidence that the Bonds or the Project financed with the proceeds of the Bonds comply with the provisions of any legislation.

9. We understand that the Bonds have not been registered with any federal or state securities agency or commission.

10. We have satisfied ourselves that the Bonds are a lawful investment for this organization under all application laws.

11. We have carefully read the Bond Documents and the Additional Information in its entirety and understand the risks described therein and understand and acknowledge that there may exist other risks with respect to the Bonds that are not described therein.

12. We acknowledge that no credit rating has been sought or obtained with respect to the Bonds, and we acknowledge that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

13. We acknowledge that we have read the form of approving opinion of Bond Counsel regarding the Bonds.

NESTLE CAPITAL CORPORATION  
Bond Purchaser

By: \_\_\_\_\_  
Name:  
Title:

**TRUST INDENTURE**

between

**CITY OF FORT SMITH, ARKANSAS**  
Issuer

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**  
Trustee

relating to

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

Dated as of December 1, 2013

*This instrument also constitutes a Security Agreement under the  
Arkansas Uniform Commercial Code.*

Prepared by:

Kutak Rock LLP  
124 West Capitol Avenue, Suite 2000  
Little Rock, Arkansas 72201

---

## TRUST INDENTURE

**THIS TRUST INDENTURE** (this “Indenture”), is made and entered into as of December 1, 2013, between the **CITY OF FORT SMITH, ARKANSAS** (the “Issuer”), a duly organized and existing city of the first class under the laws of the State of Arkansas, and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having power and authority to accept and execute trusts, and having its designated corporate trust office at 525 William Penn Place, 38<sup>th</sup> Floor, Pittsburgh, Pennsylvania 15259, as trustee (the “Trustee”).

### WITNESSETH:

**WHEREAS**, the Issuer is authorized by the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated Sections 14-164-201 *et seq.* (1998 Repl. & 2013 Supp.) (the “Act”), to acquire lands, construct and equip industrial buildings, improvements and facilities, incur other costs and expenses, and make other expenditures incidental to and for the securing and developing of industry; and

**WHEREAS**, the Issuer is authorized by the Act to issue industrial development revenue bonds payable from revenues derived from the industrial project so acquired, constructed and equipped; and

**WHEREAS**, the necessary arrangements have been made with Gerber Products Company, a Michigan corporation (the “Company”), for the acquisition, construction and equipping of a substantial industrial project consisting of production and packaging facilities to be utilized in the Company’s infant and toddler food products business (the “Project”), and to lease the Project to the Company pursuant to the terms of a Lease Agreement of even date herewith for use in the Company’s business; and

**WHEREAS**, permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the costs of the issuance of bonds is being furnished by the Issuer issuing from time to time its Taxable Industrial Development Revenue Bonds under the provisions of the Act in the aggregate principal amount of not to exceed One Hundred Fifty Million Dollars (\$150,000,000) (the “Bonds”); and

**WHEREAS**, the execution and delivery of this Trust Indenture (the “Indenture”) and the issuance of the Bonds have been in all respects duly and validly authorized by ordinance of the City Board of Directors of the Issuer, pursuant to the Act; and

**WHEREAS**, the Bonds in fully registered form and the Trustee’s certificate of authentication to be endorsed on such Bonds are all to be in substantially the form set forth in Exhibit A hereto with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture; and

**WHEREAS**, pursuant to this Indenture and to secure the payment of the Bonds, the Issuer shall pledge to the Trustee certain of its rights under the Lease Agreement, all revenues arising under the Lease Agreement, and certain other rights and property as further defined in the Granting Clauses herein; and

**WHEREAS**, all things necessary to constitute the Indenture a valid assignment and pledge of the Trust Estate for the payment of the principal of and interest on the Bonds issued hereafter, and the creation, execution and delivery of the Indenture, have in all respects been duly authorized:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS TRUST INDENTURE WITNESSETH:

That the Issuer, in consideration of the premises and of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Bonds by the Owners thereof, and of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, to it duly paid by the Trustee, at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and to insure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, has given, granted, pledged, assigned, conveyed, mortgaged and transferred and does by these presents give, grant, pledge, assign, convey, mortgage and transfer to the Trustee, and to its successors in the trusts hereby created, and to them and their assigns forever:

I.

The Lease Agreement and all rights (except with respect to rights under Section 8.6 of the Lease Agreement which are retained by the Issuer), but not obligations, of the Issuer thereunder, and all revenues and income derived by the Issuer from the leasing of the Project.

II.

All right, title and interest of the Issuer in and to the Pledged Revenues (defined herein) and all right of the Issuer in and to the collection and receipt of the Pledged Revenues.

III.

All right, title and interest of the Issuer in and to all Funds created hereunder and all moneys and Investment Securities held at any time therein.

IV.

Any and all other property of every name and nature from time to time hereafter, by delivery or by writing of any kind, given, granted, pledged, assigned, conveyed, mortgaged or transferred, as and for additional security hereunder, by the Issuer or by anyone in its behalf or

with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all time and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby given, granted, pledged, assigned, conveyed, mortgaged and transferred, or agreed or intended so to be, to the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Owners of the Bonds issued or to be issued under and secured by this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any of the others except as herein expressly provided;

PROVIDED, HOWEVER, that when the principal of and accrued and unpaid interest on all of the Bonds secured hereby have been paid or shall be deemed to have been paid in accordance with the terms and provisions of this Indenture, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be of full force and effect.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all property hereby given, granted, pledged, assigned, conveyed, mortgaged or transferred are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective Owners, from time to time, of the Bonds or any part thereof, as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** In addition to the words and terms defined in the Lease Agreement dated as of December 1, 2013 (the “Lease Agreement”), by and between the Issuer and the Company, or elsewhere defined in this Indenture, the following words and terms as used herein shall have the following meanings unless the context or use indicates another or different meaning or intent:

“*Act*” means the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated Sections 14-164-201 et seq. (1998 Repl. & 2013 Supp.), and all acts supplemental thereto or amendatory thereof.

“*Affiliate*” means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person and “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Authorized Company Representative*” means the person or persons at the time designated to act on behalf of the Company by written certificate furnished to the Issuer and the Trustee and containing the specimen signature(s) of such person(s) and signed on behalf of the Company by the President or any Vice President of the Company. Such certificate may designate an alternate or alternates.

“*Authorized Issuer Representative*” means the Mayor of the Issuer and/or any other person designated by the Mayor in a written certificate furnished to the Trustee and the Company and containing the specimen signature(s) of such person(s) and signed on behalf of the Issuer by the Mayor. Such certificate may designate an alternate or alternates.

“*Bond*” or “*Bonds*” means any or all of the City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, in the aggregate principal amount of not to exceed \$150,000,000, to be issued pursuant to this Indenture.

“*Bond Counsel*” means any firm of nationally recognized bond counsel expert in the field of municipal finance reasonably acceptable to the Issuer.

“*Bond Fund*” means the fund by that name created in Section 4.01 hereof.

“*Bondholder*” or “*Owner*” means the person in whose name any Bond is registered upon the registration books maintained pursuant to Section 2.07 hereof.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement dated December \_\_, 2013, between the Issuer and the Original Purchaser, and approved by the Company.

“*Buildings*” means those certain buildings or additions to buildings and fixtures and all other facilities forming a part of the Project, and not constituting part of the Leased Equipment, which exist or are envisioned by the Lease Agreement to be situated on the Land, as they may at any time exist.

“*Business Day*” means a day of the year other than a Saturday or Sunday on which banks located in the city in which the Principal Office of the Trustee is located, and in the city in which the Principal Office of the Paying Agent is located, are not required or authorized to close.

“*City Clerk*” means the City Clerk of the Issuer.

“*Company*” means Gerber Products Company, a Michigan corporation.

“*Completion Date*” means the date of completion of the acquisition, construction and equipping of the Project, as set forth in Article V hereof.

“*Costs of Issuance*” means all costs incurred in connection with the borrowing, including all costs incurred in connection with the authorization, sale and issuance of, and draws under, the Bonds and the transactions contemplated herein, including, but not limited to, (a) counsel fees and expenses (including Bond Counsel, as well as any other specialized counsel fees and

expenses incurred in connection with the borrowing), (b) the initial fees and expenses of the Trustee, and (c) costs incurred in connection with the required public approval process (e.g., publication costs for public notices).

“*Draw Certificate*” means, with respect to each draw under the Bonds, a certificate of the Company, approved by the Owners of all of the Bonds, such approval to be evidenced by their execution thereof, in substantially the form attached hereto as Exhibit C.

“*Escrow Investments*” means any of the following obligations or securities:

- (a) Government Obligations; and
- (b) any other obligations or securities to which all of the Bondholders consent in writing.

“*Event of Default*” means any of the events specified in Section 9.01 hereof.

“*Fund*” means a fund or an account established under this Indenture, unless the context indicates reference to a particular fund.

“*Government Obligations*” means (i) direct obligations of the United States of America, (ii) obligations on which the full and timely payment of principal and interest is fully and unconditionally guaranteed by the United States of America (including any such securities issued or held in book-entry form on the books of the Department of Treasury of the United States of America), and (iii) evidences of direct ownership or proportionate or individual interest in future interest or principal payments on specified direct obligations of, or obligations on which the full and timely payment of principal and interest is fully and unconditionally guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian in form and substance satisfactory to the Trustee.

“*Indenture*” means this Trust Indenture, dated as of December 1, 2013, between the Issuer and the Trustee, including any amendments and supplements hereto.

“*Interest Period*” means the period from and including each Payment Date to and including the day preceding the next Payment Date, except the first Interest Period for all Bonds shall begin on (and include) December \_\_, 2013.

“*Investment Securities*” means, if and to the extent the same are at the time legal for investment of funds held under this Indenture:

- (a) Cash deposits, certificates of deposits or money market deposits (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Government Obligations);

(b) Commercial paper which is rated at the time of purchase in the highest short-term rating category of at least two nationally recognized rating agencies and which matures no more than 270 days after the date of purchase;

(c) Investments in money market funds subject to SEC Rule 2a-7 and rated in the highest short-term rating category of at least one of S&P and Moody's; and

(d) Any cash sweep account maintained by the Trustee and consisting of investments described in clauses (a) through (c).

*"Investor Letter"* means the form of the letter attached as Exhibit B hereto.

*"Issuer"* means the City of Fort Smith, Arkansas, its successors and assigns.

*"Land"* means the real estate described in Exhibit "A" to the Lease Agreement.

*"Lease"* or *"Lease Agreement"* means the Lease Agreement dated as of December 1, 2013, by and between the Issuer and the Company, concerning the use of the Project by the Company.

*"Leased Equipment"* means those items of machinery, equipment, furniture and furnishings described in Exhibit B to the Lease Agreement (as it may be amended from time to time), and maintenance and repair parts related thereto, acquired and installed in the Buildings or elsewhere on the Land with proceeds from the sale of Bonds (or reimbursed with proceeds from the sale of the Bonds), and any item of machinery, equipment, furniture or furnishings acquired and installed in the Buildings or elsewhere on the Land in substitution therefor pursuant to the provisions of Sections 4.1 and 6.2 of the Lease Agreement, but not including the Company's own machinery, equipment, furniture and furnishings installed under the provisions of Section 6.1(b) of the Lease Agreement. All Leased Equipment shall be identified in a ledger maintained by the Company.

*"Maturity," "due," "payable"* and like terms mean stated maturity and any mandatory redemption prior to maturity.

*"Mayor"* means the Mayor of the Issuer.

*"Moody's"* means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successor or successors.

*"Original Purchaser"* means Nestle Capital Corporation, a corporation organized and existing under the laws of the State of Delaware, the original purchaser of the Bonds.

*"Outstanding,"* when used in reference to the Bonds, means, as at any particular date, the aggregate of all Bonds authenticated and delivered under this Indenture except:

(a) those cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation;

(b) those deemed to be paid in accordance with Article VIII of this Indenture;  
and

(c) those in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture.

“*Paying Agent*” means the Paying Agent appointed in accordance with Section 10.20 hereof.

“*Payment Date*” means each December 1 (or if not a Business Day, the next Business Day), commencing December 1, 2014.

“*Person*” means natural persons, firms, partnerships, associations, corporations, trusts, limited liability companies and public bodies.

“*PILOT Agreement*” means the Agreement for Payments in Lieu of Taxes dated December \_\_, 2013, by and between the Lessor and the Lessee.

“*Pledged Revenues*” means and shall include: (a) payments received pursuant to the Lease Agreement; (b) investment income and profits from all Funds maintained pursuant to this Indenture; and (c) any proceeds which arise from the enforcement of the obligations of the Issuer under the terms of this Indenture.

“*Principal Office*” of the Trustee means the Trustee’s office in Pittsburgh, Pennsylvania; the Principal Office of the Paying Agent means the office thereof designated in writing to the Trustee or, if the Trustee is the Paying Agent, the Principal Office of the Trustee; and the Principal Office of the Registrar means the office thereof designated in writing to the Trustee or, if the Trustee is the Registrar, the Principal Office of the Trustee.

“*Project*” means the Buildings and the Leased Equipment, and any other structure now or hereafter located on the Land in connection with such Project, and all real and personal property deemed necessary in connection therewith, as they may at any time exist, but not including the Company’s own machinery, equipment, furniture and furnishings installed under the provisions of Section 6.1(b) of the Lease Agreement.

“*Project Costs*” means all costs and items permitted to be financed under the provisions of the Act, including, but not limited to: (i) the cost of the acquisition, construction, repair, renovation, remodeling, expansion or improvement of all Buildings and other structures to be used as or in conjunction with the Project; (ii) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which are necessary or incident to providing such Project; (iii) the cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of the Project; (v) the cost of all Leased Equipment and the cost of placing the same in operation; and (v) Costs of Issuance with respect to each draw under the Bonds to finance the Project.

“*Record Date*” means the fifteenth day of the month prior to each Payment Date.

“*Registrar*” means the Registrar appointed in accordance with Section 10.22 hereof.

“*S&P*” means Standard & Poor’s Ratings Group, a Division of McGraw-Hill, a corporation organized and existing under the laws of the State of New York, its successor or successors.

“*Schedule A*” means the Schedule of Draws and Redemptions in the form attached to the Bond certificate as Schedule A, as maintained by the Trustee.

“*State*” means the State of Arkansas.

“*Trustee*” means The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee under this Indenture, its successors in trust and their assigns.

“*Trust Estate*” means the property described in the granting clauses of this Indenture.

**Section 1.02. Use of Phrases.** “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Indenture and not solely to the particular portion hereof in which any such word is used. In the use of defined terms herein, the singular includes the plural and the plural includes the singular. Masculine pronouns used in this Indenture include the feminine and neuter genders, as well as the masculine.

## ARTICLE II

### THE BONDS

#### Section 2.01. Issuance of Bonds.

(a) *Limitation.* No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

(b) *Provisions of Bonds.*

(i) The Bonds shall be designated “City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project) Series 2013,” shall be dated as of December \_\_, 2013, and shall mature, subject to prior redemption, upon the terms and conditions hereinafter set forth.

(ii) (A) The Bonds shall be issued in the aggregate principal amount of not to exceed \$150,000,000; provided, however, that the principal amount due thereon shall be only such amount as has been drawn down and not redeemed by the Issuer as reflected on Schedule A thereto, and interest shall accrue only upon such amount. Payment of each installment of interest and principal shall be made to the person in whose name the Bond is registered on the

registration books of the Issuer maintained by the Registrar at the close of business on the Record Date, irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such Payment Date. The Bonds shall bear interest from and including the latest of (a) their dated date, (b) the date to which interest has been paid or provided for until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions hereof, whether at maturity, upon redemption or otherwise, or (c) the date of the initial draw with respect to the Bonds; provided, however, that interest on the amount of each subsequent draw with respect to the Bonds shall accrue from the date of such draw. The installments of interest and principal payable on Payment Dates shall be applied first to interest at the interest rate set forth in Section 2.01(b)(ii)(B) hereof upon the principal sum or so much thereof as from time to time remains unpaid, and the balance thereof shall be applied to principal. Interest on the Bonds shall be paid in arrears, for the then preceding Interest Period, on each Payment Date and shall be computed on the basis of a 360-day year of twelve 30-day months. Bonds issued in connection with any registration of transfer or exchange shall additionally be dated the date of authentication thereof.

(B) The Bonds shall bear interest at the rate of [5.8%] per annum and shall mature on December 1, 20\_\_.

(c) *Form of Bonds.* The Bonds and the Trustee's Certificate of Authentication shall be in substantially the forms set forth in Exhibit A hereto with such appropriate variations, omissions, substitutions and insertions as are permitted or required by this Indenture and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations and as may, consistently herewith, be determined by the officers executing such Bonds as evidenced by their signing thereof. There shall be included with or printed on the Bonds the approving opinion of Bond Counsel.

(d) *Redemption.* The Bonds shall be subject to redemption prior to maturity, as set forth in Article III hereof.

(e) *Denomination.* The Bonds shall be issuable as a single fully registered Bond without coupons in the denomination of the principal amount of the Bonds then drawn, and shall be numbered "R13-1".

(f) *Manner of Payment.*

(i) Principal of all Bonds and accrued interest on all Bonds payable at maturity or on redemption shall be payable to the Owners of such Bonds upon presentation and surrender of such Bonds as they respectively become due at the Principal Office of the Paying Agent.

(ii) Accrued and unpaid interest and principal on the Bonds due on a Payment Date shall be paid on each Payment Date by check drawn upon the Paying Agent and mailed to the Owners of such Bonds as of the close of business on the Record Date next preceding the Payment Date at the registered addresses of such Owners as they shall appear on the registration books maintained by the Registrar, notwithstanding the cancellation of any of such Bonds upon any exchange or registration of transfer thereof subsequent to the Record Date and prior to such Payment Date, provided that, with respect to payments to the Owner of any Bonds in Outstanding principal amount of \$1,000,000 or more, payment of accrued and unpaid interest and principal shall be by wire transfer of immediately available funds on each Payment Date. Notwithstanding the foregoing, so long as the Bonds are owned in whole by an Affiliate of the Company, all payments of principal of or interest thereon, whether on a Payment Date or upon maturity or redemption will be made directly by the Company to the sole Bondholder on the due date (by means of net settlement through entries made on the books of the Company and Bondholder) unless and until the Company notifies the Trustee of its intent to do otherwise. Notice of the making of any such direct payment shall be given by the Company to the Trustee contemporaneously with the delivery or booking of the payment.

(iii) Payment as aforesaid shall be made in lawful money of the United States of America.

(g) *Bond Date.* The Bonds shall be dated as set forth in Section 2.01(b)(i).

(h) *Draws.* So long as no uncured default exists hereunder, draws may be made under the Bonds to finance the acquisition, construction and equipping of the Project, up to a maximum of \$150,000,000 in the aggregate of all draws under the Bonds. Draws shall be made upon compliance with all of the requirements of the Lease Agreement relating to additional draws and delivery to the Trustee of an executed copy of the Draw Certificate relating to such draw. Upon receipt of a validly completed Draw Certificate, the Trustee shall make appropriate notation of such draw on Schedule A. Upon the Original Purchaser's request and delivery of the Bond certificate to the Trustee, the Trustee shall make similar notation on the copy of Schedule A attached to the Bond certificate, but the copy of Schedule A maintained by the Trustee shall control in the event of any discrepancy.

**Section 2.02. Execution.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and the Issuer's seal shall be affixed thereto or imprinted thereon. If any officer of the Issuer who shall have executed any Bond shall cease to be such officer before the Bond so executed (by manual or facsimile signature) shall be authenticated and delivered by the Trustee, such Bond nevertheless may be authenticated and delivered as though the person who executed such Bond had not ceased to be such officer of the Issuer, but any Bond may also be executed on behalf of the Issuer by such persons as at the actual time of such execution of such Bond shall be

the proper officers of the Issuer, although at the date of such Bond such persons may not have been officers of the Issuer.

**Section 2.03. Limited and Special Obligations of Issuer.** The Bonds are limited and special obligations of the Issuer secured solely by a lien on and pledge of the Trust Estate and do not constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation. The Bonds shall never constitute or give rise to a charge against the Issuer's general credit or taxing powers. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Issuer contained in this Indenture or the Bonds or any claim based thereon or otherwise in respect thereof against any officer or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any officer or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or by reason of any of the obligations, covenants, promises or agreements entered into between the Issuer and the Trustee to be implied therefrom as being supplemental thereto, and that all personal liability of that character against every such officer and employee is expressly waived and released.

**Section 2.04. Authentication.** Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by the Trustee if manually signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

**Section 2.05. Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the Original Purchaser.

Prior to the delivery by the Trustee of the Bonds there shall be filed with the Trustee:

(a) a copy, duly certified by the City Clerk, of the ordinance or ordinances adopted by the Issuer authorizing the issuance of the Bonds and the execution, delivery and performance of this Indenture;

(b) an original executed counterpart of this Indenture and the initial Draw Certificate;

(c) original executed counterparts of the Lease Agreement, the Bond Purchase Agreement and the PILOT Agreement;

(d) a Cross Receipt for Bonds and Purchase Price signed by the Original Purchaser and the Trustee, evidencing the Original Purchaser's receipt of the Bonds and the receipt by the Trustee of the purchase price, equal to the initial draw under the Bonds, in the amount of \$ \_\_\_\_\_;

(e) an original executed Investor Letter;

(f) a written opinion of Bond Counsel to the effect that the Bonds have been duly authorized, executed and delivered by the Issuer and constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms, with appropriate exceptions for bankruptcy and principles of equity; and

(g) a Request and Authorization to Authenticate and Deliver Bonds executed by the Issuer.

Prior to the Trustee's delivery of the Bonds to the Original Purchaser, the Trustee shall make appropriate notation on Schedule A attached to the Bond certificate of the amount and date of the initial draw thereunder.

**Section 2.06. Lost, Destroyed or Improperly Cancelled Bonds.** If any Bond, whether in temporary or definitive form, is lost (whether by reason of theft or otherwise), destroyed (whether by mutilation, damage in whole or in part or otherwise) or improperly cancelled, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of like date and denomination and bearing a number not contemporaneously outstanding, provided that (a) in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee and (b) in the case of any lost Bond or Bond destroyed in whole, there shall be first furnished to the Issuer and the Trustee evidence of such loss or destruction, together with indemnity, satisfactory to them. If after the delivery of such duplicate Bond a protected purchaser of the original Bond in lieu of which such duplicate Bond was issued presents for payment such original Bond, the Issuer and the Trustee shall be entitled to recover such duplicate Bond from the person to whom it was delivered or any person taking therefrom, except a protected purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Issuer or the Trustee in connection therewith. In the event any lost, destroyed or improperly cancelled Bond shall have matured or is about to mature, or has been called for redemption, instead of issuing a duplicate Bond the Issuer may pay the same without surrender thereof (except the surrender of mutilated Bonds not destroyed or lost) if there shall be first furnished to the Issuer and the Trustee evidence of such loss or destruction, together with indemnity, satisfactory to them. Upon the issuance of any substitute Bond, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto. The Trustee may charge the Owner of any such Bond with the Trustee's reasonable fees and expenses in connection with any transaction described in this Section 2.06.

Every substitute Bond issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Bond is lost or destroyed shall constitute an additional contractual obligation of the Issuer, whether or not the lost or destroyed Bond shall be at any time enforceable, and shall

be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of lost, destroyed or improperly cancelled Bonds, notwithstanding any law or statute now existing or hereafter enacted.

**Section 2.07. Transfer, Registration and Exchange of Bonds.** The Registrar shall maintain and keep, at its Principal Office, books for the registration and registration of transfer of Bonds, which at all reasonable times shall be open for inspection by the Issuer and the Trustee. Upon presentation for such purpose of any Bond entitled to registration or registration of transfer at the Principal Office of the Registrar, the Registrar shall register or register the transfer of such Bond in such books, under such reasonable regulations as the Registrar may prescribe. The Registrar shall make all necessary provisions to permit the exchange or registration of transfer of Bonds at its Principal Office.

The registration of transfer of any Bond shall be registered upon the registration books of the Registrar at the written request of the Owner thereof or his attorney duly authorized in writing, upon surrender thereof at the Principal Office of the Registrar, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or his duly authorized attorney. Upon the registration or registration of transfer of any such Bond or Bonds, the Issuer shall issue in the name of the transferee, in authorized denominations, a new Bond or Bonds, in the same aggregate principal amount as the surrendered Bond or Bonds.

The Issuer, the Trustee, the Registrar or the Paying Agent may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and neither the Issuer, the Trustee, the Registrar nor the Paying Agent shall be affected by any notice to the contrary. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

NOTWITHSTANDING ANYTHING IN THIS INDENTURE TO THE CONTRARY, THIS BOND MAY ONLY BE TRANSFERRED ONLY IN WHOLE AND ONLY TO A PERSON OR ENTITY WHICH HAS EXECUTED AND DELIVERED TO THE ISSUER, THE COMPANY AND THE TRUSTEE AN INVESTOR LETTER IN THE FORM ATTACHED HERETO AS EXHIBIT B PRIOR TO SUCH TRANSFER.

**Section 2.08. Temporary Bonds.** Pending the preparation of definitive Bonds, the Issuer may execute and the Trustee shall authenticate and deliver temporary Bonds. Temporary Bonds shall be issuable as registered Bonds without coupons, of any authorized denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Issuer. Temporary Bonds may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Issuer and shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the Issuer shall execute and shall furnish

definitive Bonds and thereupon temporary Bonds shall be surrendered in exchange therefor without charge at the Principal Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**Section 2.09. Cancellation of Bonds.** All Bonds which shall have been surrendered to the Paying Agent or any co-paying agent for payment or redemption, and all Bonds which shall have been surrendered to the Registrar for exchange or registration of transfer, shall be delivered to the Trustee for cancellation. All Bonds delivered to or acquired by the Trustee for cancellation shall be cancelled by the Trustee and shall be deemed paid for all purposes of this Indenture. The Trustee shall furnish to the Issuer, upon receipt of a written request from the Issuer, the Paying Agent and the Registrar counterparts of certificates evidencing such cancellation and specifying such Bonds by number.

## ARTICLE III

### REDEMPTION OF BONDS

**Section 3.01. Optional Redemption.** The Bonds are subject to redemption at the option of the Company, communicated in a written notice to the Issuer and the Trustee, in whole or in part on any date, at a redemption price equal to the principal amount of the Bonds being redeemed, plus accrued and unpaid interest due thereon to the date of redemption, from funds deposited into the Bond Fund pursuant to Section 4.01(f) hereof.

**Section 3.02.** [Reserved]

**Section 3.03. Selection of Bonds to be Redeemed.** Bonds shall be redeemed from any funds available for that purpose in accordance with the provisions of this Indenture (including any supplemental indenture). If an Owner thereof presents to the Trustee any Bond to be redeemed in part, the Trustee shall make notation of such redemption on the copy of Schedule A attached to the Bond certificate.

**Section 3.04. Procedure for Redemption.** In the event any of the Bonds are called for redemption, the Trustee, after receiving written notice from the Company, shall, at the expense of the Company, give notice by first-class mail or facsimile transmission, in the name of the Issuer, of the redemption of such Bonds, which notice shall: (a) specify the Bonds, or portions thereof, to be redeemed, the redemption date, the redemption price, the location at which the Bonds are to be surrendered for payment and, if fewer than all of the Bonds are to be redeemed, the portions of Bonds, to be so redeemed; (b) state any condition to such redemption; and (c) state that on the redemption date, and upon the satisfaction of any such condition, the Bonds to be redeemed shall cease to bear interest.

Such notice may set forth any additional information relating to such redemption. If a notice of redemption shall be unconditional, then, upon presentation and surrender of Bonds so called for redemption at the place or places of payment, such Bonds shall be redeemed.

Notice of redemption shall be effective upon confirmed transmission in the case of a facsimile notice and upon deposit in the United States mails, with sufficient postage affixed, with respect to mailed notices, regardless of whether such notice is received. Failure to give the notice required by this Section 3.04, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure or defect has occurred. Notice of redemption under this Section 3.04 shall be given not less than 5 days prior to the redemption date unless a shorter period of time is agreed to in writing by the Owners of the Bonds to be redeemed.

Any Bonds or portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article VIII hereof shall cease to bear interest on the specified redemption date.

**Section 3.05. Payment of Redemption Price.** For the redemption of any of the Bonds, the Issuer shall cause to be deposited in the Bond Fund an amount sufficient to pay the principal of and the accrued and unpaid interest on the Bonds to become due on the date fixed for such redemption. The obligation of the Issuer to cause any such deposit to be made hereunder shall be reduced by the amount of moneys in the Bond Fund available on such redemption date for payment of the principal of and the accrued and unpaid interest on the Bonds to be redeemed. Upon the redemption of any of the Bonds, the Trustee shall make appropriate notation of such redemption on Schedule A. Upon the Original Purchaser's request and delivery of the Bond certificate to the Trustee, the Trustee shall make similar notation on the copy of Schedule A attached to the Bond certificate, but the copy of Schedule A maintained by the Trustee shall control in the event of any discrepancy.

## ARTICLE IV

### FUNDS AND DEPOSITS

#### **Section 4.01. Bond Fund.**

(a) There is hereby created a special fund to be held by the Trustee as a trust fund, which is hereby designated as the "City of Fort Smith, Arkansas Taxable IDB Series 2013 Bond Fund" (the "Bond Fund").

(b) There shall be deposited into the Bond Fund in accordance with Section 5.3(a) of the Lease Agreement, by wire transfer to the Trustee of immediately available funds no later than 10:00 a.m., New York City time, on each Payment Date until all Outstanding Bonds with accrued and unpaid interest thereon have been paid in full, or provision shall have been made for such payment, Pledged Revenues in an amount equal to principal and accrued and unpaid interest due and owing on the Bonds on such Payment Date.

(c) The Issuer shall also deposit into the Bond Fund, as received, all amounts received by it pursuant to Sections 5.3, 9.4 and 11.2 of the Lease Agreement.

If Pledged Revenues are insufficient to make any required payment into the Bond Fund on the date on which it is required to be made, the amount of any such deficiency in the payment made shall be paid from the first available Pledged Revenues.

There shall be credited against any deposit required pursuant to subsection (b) above any funds held in the Bond Fund at the time specified for such deposit in excess of the amounts required to be on deposit therein on the Business Day prior to the day on which the transfer is to be made and available for the purpose.

In the event that moneys deposited pursuant to subsection (b) above are not sufficient to provide for principal and accrued and unpaid interest due on the then next Payment Date, the Issuer shall (subject to Section 2.03 hereof), immediately upon notice from the Trustee, deposit an amount at least equal to such deficiency in the Bond Fund.

(d) All moneys in the Bond Fund shall be used solely for the purpose of paying principal and accrued and unpaid interest on the Bonds and the Trustee's fees, except as herein specifically provided.

(e) The Trustee shall withdraw from the Bond Fund, on any Payment Date or any redemption date, an amount equal to the portion of principal and accrued and unpaid interest then due, for the sole purpose of paying the same, which direction the Trustee hereby accepts.

(f) The Company may deposit in the Bond Fund at any time amounts from any source, which amounts shall be applied by the Trustee to redeem Bonds pursuant to Section 3.01 hereof.

(g) Notwithstanding the requirements of this Section 4.01 with respect to the deposit of Pledged Revenues to the Bond Fund, such obligations shall be deemed satisfied to the extent of the direct payment of principal and interest due on the Bonds to the Bondholder as provided in the final two sentences of Section 2.01(f)(ii).

## ARTICLE V

### APPLICATION OF PROCEEDS OF BONDS

**Section 5.01. Disposition of Bond Proceeds.** Upon each draw under the Bonds, the proceeds of such draw shall be transferred by the Original Purchaser to the Company (or at its direction) for application to pay Project Costs and Costs of Issuance pursuant to the terms of Section 4.2 of the Lease Agreement. Notice of all such transfers shall be given by the Original Purchaser to the Trustee contemporaneously with such transfers.

**Section 5.02. Establishment of Completion Date.** A Completion Date shall be established by the Company with respect to the Project in accordance with Section 4.3 of the Lease Agreement.

## ARTICLE VI

### INVESTMENTS

**Section 6.01. Investments.** Any moneys held in the Bond Fund shall be invested and reinvested in Investment Securities. Such investments shall be made, and agreements entered into, by the Trustee as directed and designated by an Authorized Company Representative in writing. As and when any amounts thus invested may be needed for disbursements, the Trustee, at the written direction of the Company, shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of the Bond Fund. As long as no Event of Default shall have occurred and be continuing, the Company shall have the right to designate the Investment Securities to be sold and otherwise to direct the Trustee in the sale or conversion to cash of the Investment Securities in the Bond Fund. Any investment direction under this Section shall specify the particular investment to be made.

The Trustee will not be responsible or liable for any loss suffered in connection with any investment of funds made by it at the direction of the Company or for determining whether any such investment is an authorized investment under applicable law or for any loss resulting from sale of investments under this Article VI. The Trustee shall not be responsible for paying interest on any uninvested funds held by it hereunder or for the investment of any fund or account not held by the Trustee. Any written direction given under this Article VI may be made by facsimile transmission or other written form.

**Section 6.02. Investment Earnings.** All earnings, whether in the form of interest or profit, derived from the investment of moneys held pursuant to this Indenture shall be credited to the Bond Fund. All losses resulting from the investment of moneys hereunder shall be credited to the Bond Fund.

**Section 6.03. Valuation of Funds.** The Trustee shall sell or present for redemption any Investment Securities as necessary to provide money for the purpose of making any payment required hereunder. To the extent that any loss or reduction in value reduces the value of the Bond Fund to a level lower than the level required under this Indenture, such loss or reduction shall be made up as set forth in Section 4.01(c) hereof. The Trustee shall not be liable for any loss resulting from any such sale.

## ARTICLE VII

### GENERAL COVENANTS

**Section 7.01. Payment of Bonds.** The Issuer covenants that it will promptly pay the principal of and the accrued and unpaid interest on every Bond issued under this Indenture at the place, on the date and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, but only from Pledged Revenues and subject to the provisions of Section 2.03 hereof.

**Section 7.02. Performance of Covenants of Issuer; Representations.** The Issuer shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto. The Issuer represents that it is duly authorized under the Constitution and laws of the State, including the Act, to issue the Bonds authorized hereby, to enter into this Indenture and to pledge and assign to the Trustee the Trust Estate.

**Section 7.03. Limited and Special Obligation.** Notwithstanding any other provision of this Indenture, no pecuniary or other obligation of the Issuer set forth herein shall constitute a general obligation or an obligation secured by the faith and credit or taxing power of the Issuer. All such obligations are special obligations of the Issuer, secured solely by the pledge of Pledged Revenues as set forth herein.

**Section 7.04. Further Instruments.** The Issuer shall from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required by applicable law to carry out the purposes of this Indenture; provided, however, that no such instruments or actions shall pledge the faith, credit or taxing power of the Issuer or any other political subdivision of the State.

**Section 7.05. No Disposition of Trust Estate.** Except as permitted by this Indenture or the Lease Agreement, the Issuer shall not sell, lease, pledge, assign or otherwise dispose of or encumber its interest in the Trust Estate and will promptly pay or cause to be discharged or make adequate provision to discharge any lien or charge on any part thereof not permitted hereby.

**Section 7.06. Access to Books.** All books and documents in the possession of the Issuer relating to the Project and the Pledged Revenues shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

## ARTICLE VIII

### DEFEASANCE; ESCHEAT

**Section 8.01. Discharge of Indenture.** If the Issuer shall pay or cause to be paid to the Owner of any Bond secured hereby the principal of and the accrued and unpaid interest due and payable on such Bond, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Indenture. If the Issuer shall pay or cause to be paid to the Owners of all the Bonds secured hereby the principal of and the accrued and unpaid interest due and payable, and shall pay or cause to be paid all other sums payable hereunder by the Issuer, including, without limiting the foregoing, the fees and expenses of the Trustee, then, and in that case, the right, title and interest of the Trustee in and to the Trust Estate shall thereupon cease, terminate and become void. In such event, the Trustee shall upon the written request of an Authorized Company Representative assign, transfer and turn over to the Company the Trust Estate, including, without limitation, any surplus in the Bond Fund.

**Section 8.02. Bonds Deemed Paid.** All or any portion of Outstanding Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Article VIII when:

(a) in the event that the Bonds or portions thereof have been selected for redemption in accordance with Section 3.03 hereof, the Trustee shall have given, or the Issuer shall have given to the Trustee in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 3.04 hereof, notice of redemption of such Bonds or portions thereof;

(b) the Trustee shall hold on deposit in the Bond Fund moneys in an amount which shall be sufficient to pay when due the principal of and the accrued and unpaid interest due and to become due on the Bonds or portions thereof on and prior to the redemption date or maturity date thereof, as the case may be;

(c) in the event said Bonds or portions thereof do not mature and are not to be redeemed within the next succeeding 5 days, the Issuer shall have given the Trustee, in form satisfactory to it, irrevocable instructions to give, as soon as practicable in the same manner as a notice of redemption is given pursuant to Section 3.04 hereof, a notice to the Owners of said Bonds, or portions thereof, that the deposit required by clause (b) above has been made with the Trustee and that the Bonds, or portions thereof, are to be paid from moneys so deposited and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the accrued and unpaid interest on said Bonds or portions thereof.

Further, any Bond shall be deemed to be paid within the meaning of this Article VIII and for all purposes of this Indenture when (a) payment of the principal of and the accrued and unpaid interest on such Bond to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein) either (i) shall have been made or caused to be made in accordance with the terms hereof or (ii) shall have been provided for by irrevocably depositing with the Trustee (A) moneys sufficient to make such payment and/or (B) Escrow Investments maturing as to principal and interest in such amount and at such time, without reinvestment, as will ensure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Trustee, including the fees and expenses of Trustee's counsel, the Registrar, the Paying Agent and any Co-Paying Agent pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Escrow Investments.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 3.04 of this Indenture or, in the event that such Bonds are not to be redeemed within the next succeeding 60 days, until the Issuer shall have given the Trustee, in form satisfactory to

the Trustee, irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, in accordance with Section 3.04 hereof, that the deposit required by (a)(ii) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article VIII and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of such Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

**Section 8.03. Transfer to Company.** On any date following the date of last maturity or redemption of all Bonds Outstanding hereunder, the Trustee may transfer any or all moneys and Investment Securities held by the Trustee hereunder to a separate account or accounts established by the Trustee. Notwithstanding any other provision of this Indenture, any moneys or Investment Securities held in any Fund for a period of two years after the date specified in this Indenture for payment to Owners of the Bonds (on account of interest, maturity, redemption prior to maturity or required purchase) shall, upon the written request of the Company, be remitted to the Company, and no Owner of any Bonds or any other person shall have any right to or interest in such moneys or Investment Securities. After payment of such moneys to the Company, all liability of the Trustee and the Paying Agent with respect to such moneys shall thereupon cease.

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 9.01. Events of Default.** Each of the following events shall constitute and is referred to in this Indenture as an “Event of Default”:

(a) a failure to pay any installment of principal or interest on any of the Bonds when the same shall become due and payable at maturity, upon redemption or otherwise;

(b) a failure by the Issuer to observe and perform any covenant, condition, agreement or provision (other than as specified in clause (a) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be observed or performed, which failure shall continue for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied and stating that it is a “Notice of Default” hereunder, shall have been given to the Issuer by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of Owners of not less than 25% in principal amount of the Bonds then Outstanding, unless the Trustee, or the Owners of a principal amount of Bonds not less than the principal amount of Bonds the Owners of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, that in the event that (i) such failure cannot be corrected within sixty (60) days, but is expected to be corrected within 180 days, (ii) the Issuer so certifies to the Trustee in writing, and (iii) the Issuer institutes corrective action within such sixty (60) days and the Issuer certifies that fact to the Trustee, then such 60-day period shall automatically be extended to a 180-day period. Successive 180-day extensions are authorized, provided the conditions in clauses (i) through (iii) above are met; and

- (c) an “event of default” shall exist under the Lease Agreement.

The Trustee may, and at the written request of Owners of not less than 25% in principal amount of the Bonds then Outstanding and payment by the Issuer or the Company of all sums then due hereunder shall, waive any Event of Default described in clause (b) or (c) of the preceding paragraph. Notwithstanding the previous sentence, the Trustee shall waive any Event of Default described in clause (b) or (c) of the preceding paragraph upon the written request of the Owners of all Bonds then Outstanding, whether or not payments have been made by the Company of all sums then due hereunder; provided, however, that all sums due to the Trustee hereunder shall have been paid. If an Event of Default occurs of which the Trustee by Section 10.05 hereof is required to take notice or deemed to have notice, or any other Event of Default occurs of which the Trustee has been specifically notified in accordance with Section 10.05 hereof, and any such Event of Default shall continue for at least two days after the Trustee acquires actual notice thereof, the Trustee shall promptly give notice thereof by first class or certified mail to the Issuer and to all Owners of Outstanding Bonds.

**Section 9.02. Remedies.** Upon the occurrence and continuance of any Event of Default, then and in every such case the Trustee shall, upon the written request of the Owners of not less than 25% in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction, in its own name and as the Trustee of an express trust:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer to carry out any agreements with or for the benefit of the Bondholders and to perform its duties under the Act and this Indenture;

(b) bring suit upon the Bonds;

(c) apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the Issuer’s interest in the Project on behalf of the Issuer and the Owners of the Bonds, with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rents sufficient to provide for the payment of principal and accrued and unpaid interest on the Bonds and the payment of the fees and expenses of the Trustee, and to apply said rents in conformity with the laws of the State and with this Indenture; or

(d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Notwithstanding any other provision herein to the contrary, the Trustee shall take no remedial action hereunder without the express written direction of the Owners of not less than 25% in principal amount of the Bonds then Outstanding.

**Section 9.03. Restoration to Former Position.** In the event that any proceeding taken by the Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the

Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**Section 9.04. Bondholders' Right To Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in principal amount of the Bonds then Outstanding hereunder shall have the right by an instrument in writing executed and delivered to the Trustee, and upon providing the Trustee with indemnity to the Trustee's satisfaction, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture, provided that no such direction shall be contrary to the provisions of this Indenture or of applicable law or could involve the Trustee in personal liability.

**Section 9.05. Rights and Remedies of Bondholders.** No Owner of any Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture, for the execution of any trust thereof or for the appointment of a receiver or to enforce any other right or remedy hereunder, unless a default has occurred of which the Trustee has been notified by the Issuer or the Owners of a majority in principal amount of the Bonds, or unless also such default shall have become an Event of Default and the Owners of 25% in principal amount of Bonds shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, or unless also such Bondholders have offered to the Trustee indemnity as provided in Section 9.02 or 9.04 hereof, or unless also the Trustee shall thereafter fail or refuse, for a period of at least 60 days, to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its, his or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other right or remedy hereunder, it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right or remedy hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds.

**Section 9.06. Costs of Enforcement.** In any proceeding to enforce the provisions of this Indenture or the Bonds, the Trustee and any plaintiff Owner of any of the Bonds shall be entitled to recover from the Issuer all costs of such proceeding, including reasonable attorneys' fees.

**Section 9.07. Proceedings by Trustee Without Possession of Bonds.** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name as trustee of an express trust for the equal and ratable benefit of the Bondholders, subject to the provisions of this Indenture.

**Section 9.08. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 9.09. No Waiver of Remedies.** No delay or omission of the Trustee or of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Article IX to the Trustee and to the Bondholders, respectively, may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE X

### TRUSTEE AND PAYING AGENT

**Section 10.01. Acceptance of Trusts.** The Trustee hereby accepts and agrees to execute the trusts specifically imposed upon it by this Indenture, but only upon the additional terms set forth in this Article X, to all of which the Issuer agrees and the respective Owners of the Bonds agree by their acceptance of delivery of any of the Bonds.

**Section 10.02. No Responsibility for Recitals.** The recitals, statements and representations contained in this Indenture or in the Bonds, save only the Trustee's certificate of authentication upon the Bonds, shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof and makes no representation as to the validity or sufficiency of the Indenture and the Bonds and shall not be responsible for reviewing any financial statements or audits delivered to it hereunder or for perfecting or maintaining the perfection of the lien of this Indenture or recording or rerecording this Indenture or filing any financing statement or continuation statement or for insuring or completing the Project.

**Section 10.03. Limitation on Liability.** The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the negligence or misconduct of any such attorney, agent or employee selected by it with reasonable care. Without limitation, the Trustee shall be entitled to the benefit of the foregoing sentence with respect to the delegation to the Paying Agent of any or all of the Trustee's duties hereunder, including its duties with respect to payment of principal or interest on, or redemption of, the Bonds and the exchange and transfer thereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatsoever in connection with the trust created hereby, except only for its own negligence or bad faith, and shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred on it by this Indenture. The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners pursuant to Section 9.04 hereof relating to the time, method and place of conducting any

proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Trustee shall not be liable for any error of judgment made in good faith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. The permissive rights of the Trustee enumerated herein shall not be construed as duties of the Trustee.

**Section 10.04. Compensation; Advances.** The Trustee, Registrar and Paying Agent shall be entitled to reimbursement for their reasonable fees for services rendered hereunder and for all advances, counsel fees and other expenses reasonably and necessarily made or incurred by them in and about the execution of the trusts created by this Indenture and in and about the exercise and performance by them of their powers and duties hereunder, and for all reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from their negligence or willful default). The Issuer agrees to indemnify the Trustee, Registrar and Paying Agent for, and save them harmless from, all losses, claims and liabilities incurred without negligence or willful default on their part arising out of or in connection with acceptance or administration of their trusts and duties hereunder. In this regard, it is understood that the Issuer pledges no funds or revenues other than Pledged Revenues to the payment of any obligation of the Issuer set forth in this Indenture. The Trustee shall have a first pledge and lien with right of payment prior to payment on account of principal or interest on any Bond issued hereunder for such reasonable advances, fees, costs, indemnities, counsel fees and expenses incurred by the Trustee.

If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture, other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its uncontrolled discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation to do so, and any and all such advances may bear interest at a rate per annum not exceeding the rate announced by the Trustee as its prime rate, but no such advance shall operate to relieve the Issuer from any default hereunder.

The obligations of the Issuer under this Section shall survive the resignation or removal of the Trustee and the discharge of this Indenture.

**Section 10.05. Notice of Events of Default.** The Trustee or the Paying Agent shall not be required to take notice, or be deemed to have notice, of any default or Event of Default under this Indenture other than an Event of Default under clause (a) of the first paragraph of Section 9.01 hereof, unless specifically notified in writing of such default or Event of Default by Owners of at least 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

**Section 10.06. Good Faith Reliance.** The Trustee, the Paying Agent and the Registrar, in the absence of bad faith on their part, shall be protected and shall incur no liability in acting or refraining from acting upon any resolution, ordinance, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which they shall believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Lease Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. As to the existence or nonexistence of any fact or as to the sufficiency or authenticity of any instrument, paper or proceeding, the Trustee shall be entitled to rely, as to the Issuer, upon any writing signed by the Mayor or the City Clerk of the Issuer and upon any writing signed by an Authorized Issuer Representative.

**Section 10.07. Identity of Owners of Bonds.** Neither the Trustee, the Registrar nor the Paying Agent shall be bound to recognize any person as an Owner of any Bond or to take any action at his or her request unless his or her Bond shall be deposited with such entity or satisfactory evidence of the ownership of such Bond shall be furnished to such entity.

**Section 10.08. Dealing in Bonds With Issuer.** The Trustee, the Paying Agent or the Registrar, in its individual capacity, may buy, sell, own, hold and deal in any of the Bonds issued hereunder, and may join in any action which any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Paying Agent or the Registrar, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depositary, trustee or agent for any committee or body of Bondholders secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

**Section 10.09. [RESERVED].**

**Section 10.10. Construction of Indenture.** The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

**Section 10.11. Resignation of Trustee.** The Trustee may resign and be discharged of the trusts created by this Indenture by executing an instrument in writing resigning such trust and filing the same with the Mayor of the Issuer and the Authorized Company Representative and by giving notice of such resignation by first class or certified mail to all Owners of Outstanding Bonds. No resignation of the Trustee pursuant to this Section shall become effective until the acceptance of appointment of a successor Trustee under Section 10.13.

**Section 10.12. Removal of Trustee.** The Trustee may be removed at any time by filing with the Trustee so removed and with the Issuer and the Company an instrument or instruments in writing appointing a successor or an instrument or instruments in writing consenting to the

appointment by the Issuer of a successor and accompanied by an instrument of appointment by the Issuer of such successor, and in any event executed by Owners of not less than a majority in principal amount of the Bonds then Outstanding.

**Section 10.13. Appointment of Successor Trustee.** In case at any time the Trustee shall be removed, or be dissolved, or if its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy, or for any other reason, a vacancy shall forthwith and ipso facto exist in the office of Trustee and a successor may be appointed, and in case at any time the Trustee shall resign, a successor may be appointed, by filing with the Issuer an instrument in writing, which may be executed in counterparts, executed by Owners of not less than a majority in principal amount of Bonds then Outstanding. Copies of such instrument shall be promptly delivered by the Issuer to the predecessor Trustee and to the Trustee so appointed.

Until a successor Trustee shall be appointed by the Bondholders as herein authorized, the Issuer, by an instrument authorized by resolution of the Issuer, shall appoint a successor Trustee. After any appointment by the Issuer, the Issuer shall cause notice of such appointment to be given by first class or certified mail to all Owners of Outstanding Bonds. Any new Trustee so appointed by the Issuer shall immediately and without further act be superseded by a Trustee appointed by the Bondholders in the manner above provided.

**Section 10.14. Qualifications of Successor Trustee.** Every successor Trustee (a) shall be a bank or trust company duly organized under the laws of the United States or any state or territory thereof authorized by law to perform all the duties imposed upon it by this Indenture and (b) shall have a combined capital stock, surplus and undivided profits of at least \$10,000,000 if there can be located, with reasonable effort, such an institution willing and able to accept the trust on reasonable and customary terms.

**Section 10.15. Judicial Appointment of Successor Trustee.** In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article X within 30 days after such resignation, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article X within six months after a vacancy shall have occurred in the office of Trustee, any Bondholder may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor Trustee.

**Section 10.16. Acceptance of Trusts by Successor Trustee.** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, such predecessor Trustee and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property rights, powers and trusts hereunder of such predecessor Trustee and, subject to the

provisions of Section 10.04 hereof, such predecessor Trustee shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

**Section 10.17. Successor by Merger or Consolidation.** Any corporation into which any Trustee hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, shall be the successor Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Indenture to the contrary notwithstanding.

**Section 10.18. Standard of Care; Action by Trustee.** Notwithstanding any other provisions of this Article X but subject to Section 10.03 hereof, the Trustee shall, during the existence of an Event of Default of which the Trustee by Section 10.05 hereof is required to take notice or deemed to have notice, or any other Event of Default of which the Trustee has been specifically notified in accordance with Section 10.05 hereof, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances in the conduct of his own affairs; provided, however, that the Trustee shall be under no obligation to take any action in respect of any default or Event of Default hereunder or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by Owners of at least 25% in principal amount of the Bonds then Outstanding, and, if in its opinion such action may tend to involve it in expense or liability unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it, but the foregoing proviso is intended only for the protection of the Trustee and shall not affect any discretion or power given by any provisions of this Indenture to the Trustee to take action in respect of any default or Event of Default without such notice or request from the Bondholders or without such security or indemnity. Except during the existence of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

Without limiting the generality of anything set forth elsewhere in this Indenture, the Trustee shall have no responsibility for the deposit, handling or securing of funds which may, under this Indenture, be deposited other than with the Trustee.

Anything herein to the contrary notwithstanding, prior to the occurrence of an Event of Default of which the Trustee by Section 10.05 hereof is required to take notice, the Trustee shall have no obligation to enforce or monitor any of the covenants of the Company under the Lease Agreement.

**Section 10.19. Intervention in Litigation of Issuer.** In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and shall, upon receipt of indemnity satisfactory to it, do so if requested in writing by Owners of at least 25% in principal amount of the Bonds then Outstanding if permitted by the court having jurisdiction in the premises.

**Section 10.20. Paying Agent.** The Issuer shall, with notice to the Trustee, appoint the Paying Agent for the Bonds, subject to the conditions set forth in Section 10.21 hereof. The Paying Agent (if other than Trustee) shall designate to the Trustee its Principal Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Trustee and the Issuer under which such Paying Agent will agree, particularly:

- (a) to hold all sums held by it for the payment of the principal of or interest on Bonds in trust for the benefit of the Bondholders until such sums shall be paid to such Bondholders or otherwise disposed of as herein provided;
- (b) to keep such books and records as shall be consistent with prudent industry practice, to make such books and records available for inspection by the Issuer, the Company and the Trustee at all reasonable times; and
- (c) upon the request of the Trustee, to forthwith deliver to the Trustee all sums so held in trust by such Paying Agent.

The Issuer shall cooperate with the Trustee to cause the necessary arrangements to be made and to be thereafter continued whereby funds derived from the sources specified in Section 4.01 hereof will be made available for the payment when due of the Bonds as presented at the Principal Offices of the Paying Agent.

The Bank of New York Mellon Trust Company, N.A., is hereby appointed the initial Paying Agent.

**Section 10.21. Qualifications of Successor Paying Agent; Resignation; Removal.** Any successor Paying Agent shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$10,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture. The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice by certified or first class mail to the Issuer, the Trustee and the Company. The Paying Agent may be removed at any time, by an instrument, signed by the Issuer, filed with the Paying Agent, the Trustee and the Company.

In the event of the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee.

In the event that the Issuer shall fail to appoint a Paying Agent hereunder, or in the event the Paying Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Paying Agent shall be taken under the control of any state or federal court of administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying

Agent for all purposes of this Indenture until the appointment of the Paying Agent or successor Paying Agent, as the case may be.

**Section 10.22. Registrar.** The Issuer shall, with written notice to the Trustee, appoint the Registrar and any successor Registrar for the Bonds, subject to the conditions set forth in Section 10.23 hereof. The Registrar (if other than the Trustee) shall designate to the Trustee its Principal Office and signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer and the Trustee under which such Registrar will agree, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Company and the Trustee at all reasonable times.

The Issuer shall cooperate with the Trustee to cause the necessary arrangements to be made and to be thereafter continued whereby Bonds, executed by the Issuer and authenticated by the Trustee, shall be made available for exchange, registration and registration of transfer at the Principal Office of the Registrar. The Issuer shall cooperate with the Trustee and the Registrar to cause the necessary agreements to be made and thereafter continued whereby the Paying Agent shall be furnished such records and other information at such times as shall be required to enable the Paying Agent to perform the duties and obligations imposed upon it hereunder.

The Bank of New York Mellon Trust Company, N.A., is hereby appointed the initial Registrar.

**Section 10.23. Qualifications of Successor Registrar; Resignation; Removal.** Any successor Registrar shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$10,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture. The Registrar may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice by certified or first class mail to the Issuer, the Trustee, each Paying Agent and the Company. The Registrar may be removed at any time by an instrument signed by the Issuer and filed with the Registrar, the Trustee and the Company.

In the event of the resignation or removal of the Registrar, the Registrar shall deliver any Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee.

In the event that the Issuer shall fail to appoint a Registrar hereunder, or in the event that the Registrar shall resign or be removed, or be dissolved, or if the property or affairs of the Registrar shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed its successor as Registrar, the Trustee shall ipso facto be deemed to be the Registrar for all purposes of this Indenture until the appointment by the Issuer of the Registrar or successor Registrar, as the case may be.

**Section 10.24. Co-Trustees.** The Trustee and the Issuer shall have power to appoint and, upon the request of the Trustee, the Issuer shall for such purpose join with the Trustee in the

execution of all instruments necessary or proper to appoint another corporation or one or more persons approved by the Trustee, either to act as co-trustee or co-trustees jointly with the Trustee of all or any of the Pledged Revenues or any of the properties, tangible or intangible, subject to the lien hereof or with respect to which the Trustee has powers or duties hereunder, or to act as separate trustee or trustees of all or any such Pledged Revenues or properties, with such powers as may be provided in the instrument of appointment and to vest in such corporation or person or persons as such separate trustee or co-trustee any property, title, right or power deemed necessary or desirable. In the event that the Issuer shall not have joined in such appointment within 15 days after the receipt by it of a written request so to do, the Trustee alone shall have the power to make such appointment. Should any deed, conveyance or instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed for more fully and certainly vesting in and confirming to him, her or to it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Every such co-trustee and separate trustee shall, to the extent permitted by law, be appointed subject to the following provisions and conditions, namely:

(a) The Bonds shall be authenticated and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody of all money and securities pledged or deposited hereunder shall be exercised solely by the Trustee; and

(b) The Trustee, at any time by an instrument in writing, may remove any such separate trustee or co-trustee.

Every instrument, other than this Indenture, appointing any such co-trustee or separate trustee, shall refer to this Indenture and the conditions of this Article X and, upon the acceptance in writing by such separate trustee or co-trustee, he, she, they or it shall be vested with the estate or property specified in such instrument, jointly with the Trustee (except insofar as local law makes it necessary that any separate trustee act alone), subject to all the trusts, conditions and provisions of this Indenture. Any such separate trustee or co-trustee may at any time, by an instrument in writing, constitute the Trustee as his, her, their or its agent or attorney-in-fact with full power and authority, to the extent authorized by law, to do all acts and things and exercise all discretion authorized or permitted by him, her, them or it, for and on behalf of him, her, them or it and in his, her, their or its name. In case any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all the estate, properties, rights, powers, trusts, duties and obligations of said separate trustee or co-trustee shall vest in and be exercised by the Trustee.

**Section 10.25. Several Capacities.** Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Paying Agent or a Co-Paying Agent and the Registrar and in any other combination of such capacities to the extent permitted by law. The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises herein.

**Section 10.26. Waiver of Noncompliance of Trustee, Paying Agent and Registrar.** Anything in this Indenture to the contrary notwithstanding, the Bondholders of all of the Bonds at

the time Outstanding may waive noncompliance with any provision of this Indenture by the Trustee, Paying Agent or Registrar where such waiver has no negative effect on the rights of the Issuer hereunder or the validity of the Bonds. The Trustee may condition the effectiveness of such a waiver on the delivery of an opinion of Bond Counsel to such effect.

## ARTICLE XI

### EXECUTION OF INSTRUMENTS BY BONDHOLDERS; PROOF OF OWNERSHIP OF BONDS

Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution or by such other manner as the Trustee deems sufficient.

(b) The ownership of Bonds shall be provided by the registration books kept under the provisions of Section 2.07 hereof.

Nothing contained in this Article XI shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of matters herein stated which it may deem sufficient. Any request or consent of any Bondholder shall bind every future Owner of the same Bond or any Bond or Bonds issued in exchange thereof, on registration of transfer thereof or in lieu thereof in respect of anything done by the Trustee or the Issuer in pursuance of such request or consent.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

#### Section 12.01. [Reserved]

**Section 12.02. Supplemental Indentures Requiring Consent of All Bondholders.** Subject to the terms and provisions contained in this Section, and not otherwise, all of the Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable

by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that nothing in this Section contained shall permit or be construed as permitting (a) an extension of the maturity date or date on which the principal of or the interest on any Bond is, or is to become, due and payable, (b) a reduction in the principal amount of any Bond or the rate of interest thereon, (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (d) a reduction in the principal amount of the Bonds required for consent to such supplemental indenture, unless the Owners of all Bonds then Outstanding consent in writing to such modifications.

If the Issuer shall request that the Trustee enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, give notice by certified or first class mail of the proposed execution of such supplemental indenture to the Owners of the Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies are on file at the Principal Office of the Trustee for inspection by all Bondholders. If, within 60 days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, all of the Bondholders shall have consented to and approved the execution of such supplemental indenture as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereon, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be modified and amended in accordance therewith.

**Section 12.03. Discretion of Trustee in Entering Into Supplements and Amendments.** In every case provided for in this Article, the Trustee shall not be obligated to execute any proposed supplements or amendments if the rights, obligations and interests of the Trustee, under this Indenture or otherwise, would be thereby affected, and the Trustee shall not be under any responsibility or liability to the Issuer or to any Bondholder or to anyone whomsoever for its refusal in good faith to enter into any such supplement or amendment if such supplement or amendment is deemed by it to be contrary to the provisions of this Article.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Bond Counsel as conclusive evidence that any such proposed supplement or amendment does or does not comply with the provisions of this Indenture, and that it is or is not proper for it, under the provisions of this Article, to join in the execution of such supplement or amendment.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Successors of Issuer.** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained, by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer

from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred. In the event that the offices of Mayor, City Clerk or City Board of Directors shall be abolished or shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his or her office by reason of sickness, absence or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

**Section 13.02. Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Issuer, the Trustee, the Paying Agent, the Registrar and the Bondholders any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Trustee, the Paying Agent, the Registrar and the Bondholders.

**Section 13.03. Severability.** In case any one or more of the provisions of this Indenture or of the Bonds shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or of such Bonds, and this Indenture and such Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**Section 13.04. No Personal Liability of Issuer Officials.** No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any official, officer, director, agent or employee of the Issuer in his individual capacity, and no official of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 13.05. Bonds Owned by Issuer.** In determining whether Bondholders of the requisite aggregate principal amount of the Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer (unless the Issuer owns all Bonds which are then Outstanding, determined without regard to this Section 13.05) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Trustee knows are so owned shall be so disregarded, and Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bond and that the pledgee is not the Issuer. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

**Section 13.06. Counterparts.** This Indenture may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Indenture.

**Section 13.07. Governing Law.** The laws of the State of Arkansas shall govern the construction and enforcement of this Indenture and of all Bonds issued hereunder; provided, however, the administration of the trust imposed upon the Trustee by this Indenture and the rights and duties of the Trustee hereunder shall be governed by, and construed in accordance with, the laws of the jurisdiction in which the Trustee has its Principal Office.

**Section 13.08. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by facsimile transmission or by first class, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to the Issuer: City of Fort Smith  
P.O. Box 1908  
Fort Smith, AR 72903  
Attention: Mayor  
Phone: (479) 784-2201  
Fax: (479) 784-2430

(b) If to the Company: Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932  
Attention: \_\_\_\_\_  
Phone: ( ) -  
Fax: ( ) -

With a copy to the Bondholder: Nestle Capital Corporation  
800 N. Brand Blvd.  
Glendale, CA 91203  
Attention: Treasurer – 12<sup>th</sup> Floor  
Phone: ( ) -  
Fax: ( ) -

(c) If to the Trustee, Registrar  
or Paying Agent: The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38<sup>th</sup> Floor  
Pittsburgh, PA 15259  
Attention: Kerry S. Zombeck  
Phone: (412) 236-5720  
Fax: (412) 236-0870

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Trustee to any one of the others shall also be given to all of the others. The Issuer, the Trustee, the Company, the Registrar and the Paying Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

The Mayor and any Authorized Issuer Representative are authorized to effect any approval, consent or direction on behalf of the Issuer under this Indenture, and the Trustee may rely upon any written approval, consent or direction signed by the Mayor or any Authorized Issuer Representative.

**Section 13.09. Holidays.** Unless otherwise provided herein, if the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

**Section 13.10. Commencement of Effectiveness.** This Indenture shall not create any right of any kind and no right of any kind shall arise hereunder until the Bonds are issued.

**Section 13.11. Captions.** The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Indenture.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Indenture to be executed in their respective names by their duly authorized officers and signatories, all as of the day and year first above written.

**CITY OF FORT SMITH, ARKANSAS,**  
as Issuer

By: \_\_\_\_\_  
Name: Sandy Sanders  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Name: Sherri Gard  
Title: City Clerk

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,** as Trustee

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO TRUST INDENTURE]

**EXHIBIT A**  
(Form of Bond)

THIS BOND IS SUBJECT TO SIGNIFICANT RESTRICTIONS SET FORTH IN THE INDENTURE, AS DEFINED HEREIN, INCLUDING WITHOUT LIMITATION THE REQUIREMENT THAT THIS BOND MAY BE TRANSFERRED ONLY IN WHOLE, AND NOT IN PART, AND THAT EACH PURCHASER HEREOF MUST DELIVER AN INVESTOR LETTER IN THE FORM SET FORTH AS EXHIBIT B TO THE INDENTURE.

REGISTERED

REGISTERED

No. R13-1

NOT TO EXCEED  
\$150,000,000  
[See Schedule A]

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF SEBASTIAN  
CITY OF FORT SMITH, ARKANSAS  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(Gerber Products Company Project)  
Series 2013

Interest Rate: [5.8%]

Maturity Date: December 1, 20\_\_

Dated Date: \_\_\_\_\_, 2013

Registered Owner: NESTLE CAPITAL CORPORATION

Principal Amount: NOT TO EXCEED \$150,000,000 (See Schedule A) Dollars

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, Arkansas, (the "Issuer"), for value received, hereby promises to pay, but solely from the sources as hereinafter provided and not otherwise, to the Registered Owner shown above, or registered assigns, upon the presentation and surrender hereof at the Principal Office of The Bank of New York Mellon Trust Company, N.A., or its successor or successors (the "Paying Agent"), on the Maturity Date shown above, such portion of the principal amount shown above as shall have been advanced to the Issuer as reflected by the Schedule of Draws and Redemptions maintained by the Trustee in the form of Schedule A hereto (and as may be confirmed by the Trustee on such attached Schedule A), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay to the Registered Owner hereof interest thereon, but solely from the sources as hereinafter provided and not otherwise, in like coin or currency from the Dated Date hereof or from the most recent payment date to which interest has been paid or duly

provided for at the Interest Rate per annum shown above, payable on December 1, 2014 and annually on each December 1 thereafter until payment of such principal sum or, if this Bond or a portion thereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this Bond; provided, however, that the installments of interest and principal payable on payment dates shall be applied first to interest at the interest rate set forth above upon the principal sum or so much thereof as from time to time remains unpaid and the balance thereof shall be applied to principal. Payment of each installment of interest shall be by check or draft drawn on the Paying Agent and mailed to the person in whose name this Bond is registered on the registration books of the Issuer maintained by the Registrar, The Bank of New York Mellon Trust Company, N.A., at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each payment date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to or on such payment date, provided that, with respect to the Registered Owner of any Bonds in the aggregate outstanding principal amount of \$1,000,000 or more, payment of interest shall be by wire transfer of immediately available funds on each payment date.

This Bond is one of the City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, aggregating not to exceed \$150,000,000 in principal amount (the "Bonds"), issued for the purpose of financing the costs of acquiring, constructing and equipping infant and toddler foods production and packaging facilities (the "Project") to be leased to and operated by Gerber Products Company, a Michigan corporation (the "Company").

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Arkansas Code Annotated Section 14-164-201 *et seq.* (1998 Repl. & Supp. 2013), as amended (the "Act"), and pursuant to an Ordinance of the Issuer, duly adopted and approved on November \_\_, 2013. The Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation. The Bonds are not general obligations of the Issuer but are special obligations payable solely from the revenues derived under the Lease Agreement dated as of December 1, 2013 (the "Lease Agreement"), between the Issuer and the Company. The Bonds are secured pursuant to a Trust Indenture dated as of December 1, 2013 (the "Indenture") between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). Reference is hereby made to the Indenture for a detailed statement of the terms and conditions upon which the Bonds are issued, the nature and extent of the security for the Bonds, and the rights and obligations of the Issuer, the Trustee, the Paying Agent, the Registrar and the Registered Owners of the Bonds. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

The Bonds are subject to redemption at the option of the Company, communicated in a notice to the Issuer and the Trustee, in whole or in part on any date, at a redemption price equal to the principal amount of the Bonds being redeemed, plus interest due thereon to the date of redemption.

For all Bonds called for redemption, the Trustee shall give notice by facsimile transmission or first-class mail, in the name of the Issuer, of the redemption of such Bonds,

which notice shall (i) specify the Bonds, or portions thereof, to be redeemed, the redemption date, the redemption price, the location at which the Bonds are to be surrendered for payment and, if fewer than all of the Bonds are to be redeemed, the portions of Bonds, to be redeemed, and (ii) state that on the redemption date the Bonds to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption.

Notice of redemption shall be given not less than 5 days prior to the redemption date unless a shorter period of time is agreed to in writing by the Registered Owners of the Bonds to be redeemed. Notice of redemption shall be effective upon confirmed transmission in the case of a facsimile notice, and with respect to mailed notices, upon deposit in the U.S. mails, with sufficient postage affixed, regardless of whether such notice is received. Failure to give the notice required, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure or defect has occurred.

Any Bonds or portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear interest on the specified redemption date.

This Bond is transferable by the Registered Owner hereof in person or by his or her attorney in fact duly authorized in writing at the Principal Office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon the request of any holder or transferee of this Bond, and surrender of the affected Bond, a new fully registered Bond for the same aggregate principal amount will be issued in exchange therefor. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction. NOTWITHSTANDING ANYTHING IN THIS BOND OR THE INDENTURE TO THE CONTRARY, THIS BOND MAY BE TRANSFERRED ONLY AS A WHOLE AND ONLY TO A PERSON OR ENTITY WHICH HAS EXECUTED AN INVESTOR LETTER PRIOR TO SUCH TRANSFER IN THE FORM ATTACHED TO THE INDENTURE, AS EXHIBIT B.

The Issuer, the Trustee, the Registrar and the Paying Agent may deem and treat the Registered Owner hereof as the absolute Owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and no notice to the contrary shall be of any effect.

The Bonds are issuable only as a single fully registered Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the Issuer, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this Bond to be executed by its Mayor and City Clerk, by their manual or facsimile signatures duly authorized, and its corporate seal to be affixed or imprinted on this Bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

Dated: December \_\_, 2013

(Form of Trustee’s Certificate)

**TRUSTEE’S CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., Trustee

By: \_\_\_\_\_  
Authorized Officer

(Form of Assignment)

**ASSIGNMENT**

FOR VALUE RECEIVED, \_\_\_\_\_ (“Transferor”) hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ Social Security or other identifying number: \_\_\_\_\_ the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_ as attorney to transfer the within bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Transferor

GUARANTEED BY:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of a national securities exchange. Notarized or witnessed signatures are not acceptable.

NOTICE: The Signature on this assignment must correspond with the name of the Registered Owner as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

**SCHEDULE A**

**SCHEDULE OF DRAWS AND REDEMPTIONS**

<b>Date of Draw/Redemption</b>	<b>Amount Of Draw</b>	<b>Cumulative Principal Amount Drawn</b>	<b>Amount of Redemption</b>	<b>Cumulative Outstanding Principal Amount</b>
December __, 2013	\$ _____	\$ _____	\$ -	\$ _____

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

[PREPARED ON LETTERHEAD OF BOND PURCHASER]

December \_\_, 2013

Kutak Rock LLP  
124 West Capitol Avenue  
Suite 2000  
Little Rock, AR 72201

City of Fort Smith, Arkansas  
P.O. Box 1908  
Fort Smith, AR 72903  
Attn.: Mayor

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38<sup>th</sup> Floor  
Pittsburgh, PA 15259  
Attn: Kerry S. Zombeck

Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932  
Attn: \_\_\_\_\_

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

Ladies and Gentlemen:

In connection with the purchase by us of the above-described bonds (the “Bonds”), we hereby certify as follows:

1. We understand that we will not receive from the City of Fort Smith, Arkansas (the “Issuer”), Gerber Products Company (the “Company”), The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), their governing bodies, their members or any of their officers, employees or agents or Kutak Rock LLP (“Bond Counsel”) any information with respect to the use of the proceeds of the Bonds and the Project, as defined in the Trust Indenture dated as of December 1, 2013, with respect to

the Bonds (the “Indenture”), the Bonds themselves, the provisions for payment thereof, the security therefor or the sufficiency of such provisions for payment thereof and security therefor, except (a) in the documentation executed in connection with the issuance of the Bonds, copies of which have been provided to us and reviewed by us prior to our purchase of the Bonds (the “Bond Documents”), and (b) as has been specifically requested by us from the Company and which has been provided to us and reviewed by us prior to our purchase of the Bonds (the “Additional Information”).

2. Neither the Issuer, the Company, the Trustee, their governing bodies, their members nor any of their officers, employees or agents nor Bond Counsel will have any responsibility to us for the accuracy or completeness of information obtained by us from any source regarding the Project, the Issuer, the Company or its assets, business, circumstances, financial condition and properties, or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Bond Documents. We acknowledge that, as between us and all of such parties: (a) we have assumed responsibility for obtaining such information and making such review as we have deemed necessary or desirable in connection with our decision to purchase the Bonds, and (b) the Bond Documents and the Additional Information constitute all the information and, with the investigation made by us (including specifically our investigation of the Company and the Project) prior to our purchase of the Bonds, review that we have deemed necessary or desirable in connection with our decision to purchase the Bonds.

3. We have been offered copies of or full access to all documents relating to the issuance of the Bonds and all records, reports, financial statements and other information concerning the Issuer, the Company and the Project and pertinent to the source of payment for the Bonds which we, as a reasonable investor, have requested and to which we, as a reasonable investor, would attach significance in making investment decisions. We have been afforded the opportunity to ask such questions of representatives of the Company as we have deemed necessary in making our investment decisions; and we have based our decision to invest in the Bonds solely on our own investigation, including, without limitation, our review of such documents, records, reports, financial statements and other information concerning the Company and the Project and discussions with representatives of the Company.

4. We are either (a) a bank, registered investment company, insurance company or other “accredited investor” as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, or (b) described in paragraph 5. If described in this paragraph 4, we are duly and validly organized under the laws of our jurisdiction of incorporation or organization, and we can bear the economic risk of the purchase of the Bonds and have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2. If I am a natural person described in this paragraph 4: (i) I have a net worth, or joint net worth with my spouse, of

at least \$ 1,000,000, or (ii) I had an individual income in excess of \$200,000 in each of the two most recent years or joint income with my spouse in excess of \$300,000 in each of those years and have a reasonable expectation of reaching the same income level in the current year.

5. If not described in paragraph 4, we are a registered investment advisor purchasing the Bonds for inclusion in the portfolio of a registered investment company advised by us and over whose transactions we have discretionary power. If described in this paragraph 5, we have such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph 2, and the investment company for which we are purchasing the Bonds is duly and validly organized under the laws of its jurisdiction of incorporation or organization and can bear the economic risk of the purchase of the Bonds.

6. The Bonds have been purchased for our own account for investment and not with a view to the distribution, transfer or resale thereof, provided that the disposition of the Bonds shall at all times be within our sole control.

7. We are duly and legally authorized to purchase obligations such as the Bonds.

8. We have not and will not rely on any action taken by the Issuer of the Bonds, including, but not limited to, issuance of the Bonds, as evidence that the Bonds or the Project financed with the proceeds of the Bonds comply with the provisions of any legislation.

9. We understand that the Bonds have not been registered with any federal or state securities agency or commission.

10. We have satisfied ourselves that the Bonds are a lawful investment for this organization under all application laws.

11. We have carefully read the Bond Documents and the Additional Information in its entirety and understand the risks described therein and understand and acknowledge that there may exist other risks with respect to the Bonds that are not described therein.

12. We acknowledge that no credit rating has been sought or obtained with respect to the Bonds, and we acknowledge that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

13. We acknowledge that we have read the form of approving opinion of Bond Counsel regarding the Bonds.

NESTLE CAPITAL CORPORATION  
Bond Purchaser

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C**

**FORM OF DRAW CERTIFICATE**

[date of draw]

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38<sup>th</sup> Floor  
Pittsburgh, PA 15259  
Attention: Kerry S. Zombeck

Ladies and Gentlemen:

The undersigned, an Authorized Company Representative, as defined in the Trust Indenture dated as of December 1, 2013 (the "Indenture"), between the City of Fort Smith, Arkansas (the "Issuer"), and The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), providing for the issuance of the captioned bonds (the "Bonds"), hereby certifies and requests as follows:

1. Pursuant to this Draw Certificate (as defined in the Indenture), Gerber Products Company (the "Company") requests a draw under the Bonds on the date hereof in the amount of \$ \_\_\_\_\_ (the "Draw").
2. The Draw shall be utilized to reimburse the Company for the payment of Project Costs or Costs of Issuance (as defined in the Indenture).
3. The requested amount of this Draw, when added to the amount of all prior Draws under the Indenture, does not exceed \$150,000,000.
4. The undersigned has examined the provisions of the Indenture and the Lease Agreement dated as of December 1, 2013 (the "Lease Agreement"), between the Issuer, as lessor thereunder, and the Company, as lessee thereunder, relating to draws under the Bonds, and hereby certifies that the Company has complied with all conditions to the effectiveness of the Draw.

5. To the knowledge of the undersigned, as of the date hereof, there is no uncured default under the Lease Agreement or the Indenture.

6. The undersigned acknowledges that the amount of the Draws to be made by the Company pursuant to Section 5.01 of the Indenture are intended to be contemporaneously funded from time to time through purchases of the Bonds by the Original Purchaser (as defined in the Indenture) or its successor. Such purchases shall be made by wire transfer of federal funds equal to the applicable purchase price to the Company.

Contemporaneous notice shall be given to the Trustee of all amounts transferred to the Company for the purchase of the Bonds.

7. The Trustee is requested to make appropriate notation of the Draw on Schedule A of the Bonds.

GERBER PRODUCTS COMPANY

By: \_\_\_\_\_  
Name:  
Title:

The foregoing is acknowledged and approved by the undersigned:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Name:  
Title:

NESTLE CAPITAL CORPORATION,  
as Original Purchaser

By: \_\_\_\_\_  
Name:  
Title:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions..... 3  
 Section 1.02. Use of Phrases..... 8

ARTICLE II

THE BONDS

Section 2.01. Issuance of Bonds ..... 8  
 Section 2.02. Execution ..... 10  
 Section 2.03. Limited and Special Obligations of Issuer ..... 11  
 Section 2.04. Authentication..... 11  
 Section 2.05. Delivery of Bonds ..... 11  
 Section 2.06. Lost, Destroyed or Improperly Cancelled Bonds ..... 12  
 Section 2.07. Transfer, Registration and Exchange of Bonds..... 13  
 Section 2.08. Temporary Bonds..... 13  
 Section 2.09. Cancellation of Bonds..... 14

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Optional Redemption..... 14  
 Section 3.02. [Reserved]..... 14  
 Section 3.03. Selection of Bonds to be Redeemed ..... 14  
 Section 3.04. Procedure for Redemption ..... 14  
 Section 3.05. Payment of Redemption Price..... 15

ARTICLE IV

FUNDS AND DEPOSITS

Section 4.01. Bond Fund..... 15

ARTICLE V

APPLICATION OF PROCEEDS OF BONDS

Section 5.01. Disposition of Bond Proceeds..... 16  
 Section 5.02. Establishment of Completion Date ..... 16

## ARTICLE VI

## INVESTMENTS

Section 6.01.	Investments .....	17
Section 6.02.	Investment Earnings.....	17
Section 6.03.	Valuation of Funds.....	17

## ARTICLE VII

## GENERAL COVENANTS

Section 7.01.	Payment of Bonds .....	17
Section 7.02.	Performance of Covenants of Issuer; Representations.....	18
Section 7.03.	Limited and Special Obligation .....	18
Section 7.04.	Further Instruments .....	18
Section 7.05.	No Disposition of Trust Estate.....	18
Section 7.06.	Access to Books .....	18

## ARTICLE VIII

## DEFEASANCE; ESCHEAT

Section 8.01.	Discharge of Indenture .....	18
Section 8.02.	Bonds Deemed Paid.....	19
Section 8.03.	Transfer to Company .....	20

## ARTICLE IX

## DEFAULT AND REMEDIES

Section 9.01.	Events of Default .....	20
Section 9.02.	Remedies.....	21
Section 9.03.	Restoration to Former Position .....	21
Section 9.04.	Bondholders' Right To Direct Proceedings .....	22
Section 9.05.	Rights and Remedies of Bondholders.....	22
Section 9.06.	Costs of Enforcement.....	22
Section 9.07.	Proceedings by Trustee Without Possession of Bonds .....	22
Section 9.08.	No Remedy Exclusive.....	23
Section 9.09.	No Waiver of Remedies.....	23

## ARTICLE X

## TRUSTEE AND PAYING AGENT

Section 10.01.	Acceptance of Trusts.....	23
Section 10.02.	No Responsibility for Recitals .....	23
Section 10.03.	Limitation on Liability .....	23
Section 10.04.	Compensation; Advances.....	24
Section 10.05.	Notice of Events of Default .....	24
Section 10.06.	Good Faith Reliance .....	25
Section 10.07.	Identity of Owners of Bonds .....	25
Section 10.08.	Dealing in Bonds With Issuer .....	25
Section 10.09.	[Reserved] .....	25
Section 10.10.	Construction of Indenture .....	25
Section 10.11.	Resignation of Trustee .....	25
Section 10.12.	Removal of Trustee.....	25
Section 10.13.	Appointment of Successor Trustee .....	26
Section 10.14.	Qualifications of Successor Trustee.....	26
Section 10.15.	Judicial Appointment of Successor Trustee.....	26
Section 10.16.	Acceptance of Trusts by Successor Trustee.....	26
Section 10.17.	Successor by Merger or Consolidation .....	27
Section 10.18.	Standard of Care; Action by Trustee.....	27
Section 10.19.	Intervention in Litigation of Issuer.....	27
Section 10.20.	Paying Agent.....	28
Section 10.21.	Qualifications of Successor Paying Agent; Resignation; Removal .....	28
Section 10.22.	Registrar .....	29
Section 10.23.	Qualifications of Successor Registrar; Resignation; Removal .....	29
Section 10.24.	Co-Trustees .....	29
Section 10.25.	Several Capacities.....	30
Section 10.26.	Waiver of Noncompliance of Trustee, Paying Agent and Registrar.....	30

## ARTICLE XI

EXECUTION OF INSTRUMENTS BY BONDHOLDERS; PROOF OF OWNERSHIP OF BONDS .....	31
--	----

## ARTICLE XII

## SUPPLEMENTAL INDENTURES

Section 12.01.	[Reserved] .....	31
Section 12.02.	Supplemental Indentures Requiring Consent of All Bondholders.....	31
Section 12.03.	Discretion of Trustee in Entering Into Supplements and Amendments.....	32

## ARTICLE XIII

## MISCELLANEOUS

Section 13.01.	Successors of Issuer .....	32
Section 13.02.	Parties in Interest.....	33
Section 13.03.	Severability .....	33
Section 13.04.	No Personal Liability of Issuer Officials.....	33
Section 13.05.	Bonds Owned by Issuer .....	33
Section 13.06.	Counterparts .....	33
Section 13.07.	Governing Law .....	34
Section 13.08.	Notices .....	34
Section 13.09.	Holidays .....	35
Section 13.10.	Commencement of Effectiveness.....	35
Section 13.11.	Captions .....	35
Signatures.....		36
Exhibit A	Form of Bond .....	A-1
Exhibit B	Form of Investor Letter.....	B-1
Exhibit C	Form of Draw Certificate .....	C-1

**CITY OF FORT SMITH, ARKANSAS**  
Lessor

to

**GERBER PRODUCTS COMPANY**  
Lessee

---

**LEASE AGREEMENT**

Dated as of December 1, 2013

---

*This instrument also constitutes a Security Agreement under the Arkansas Uniform Commercial Code.*

Certain rights of the Lessor under this Lease Agreement have been assigned to, and are subject to a security interest in favor of The Bank of New York Mellon Trust Company, N.A., as Trustee under a Trust Indenture dated as of December 1, 2013, securing the Lessor's not to exceed \$150,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013.

Prepared by:

Kutak Rock LLP  
124 West Capitol Avenue, Suite 2000  
Little Rock, Arkansas 72201

## LEASE AGREEMENT

This **LEASE AGREEMENT** dated as of December 1, 2013 (this “Lease Agreement”), between the **CITY OF FORT SMITH, ARKANSAS**, as lessor (the “Lessor”), a municipal corporation duly organized and existing under the laws of the State of Arkansas, and **GERBER PRODUCTS COMPANY**, as lessee (the “Lessee”), a corporation organized and existing under the laws of the State of Michigan.

### W-I-T-N-E-S-S-E-T-H:

WHEREAS, the Lessor is authorized by the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated Sections 14-164-201 *et seq.* (1998 Repl. & 2013 Supp.) (the “Act”), to acquire lands, construct and equip industrial buildings, improvements and facilities, incur other costs and expenses, and make other expenditures incidental to and for the securing and developing of industry; and

WHEREAS, the Lessor is authorized by the Act to issue industrial development revenue bonds payable from revenues derived from the industrial project so acquired, constructed and equipped; and

WHEREAS, the Lessee has requested the assistance of the Lessor in the financing of the acquisition, construction and equipping of a substantial industrial project consisting of production and packaging facilities and equipment for use in the Lessee’s infant and toddler food products business (the “Project”); and

WHEREAS, the Lessor has determined to issue its Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, in the aggregate principal amount of not to exceed \$150,000,000 (the “Bonds”), pursuant to the provisions of a Trust Indenture dated as of even date herewith (the “Indenture”), between the Lessor and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), for the purpose of financing the Project; and

WHEREAS, the Lessor proposes to lease the Project and the related premises to the Lessee upon the terms and conditions set forth herein; and

WHEREAS, the Lessor and the Lessee each have full right and lawful authority to enter into this Lease Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed; and

WHEREAS, pursuant to the Indenture and to secure the payment of the Bonds, the Lessor shall pledge to the Trustee certain of its rights under this Lease Agreement, all revenues arising under this Lease Agreement, and certain other rights and property;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the Lessor and the Lessee agree as follows (provided, that in the performance of the agreements of the Lessor herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part, but shall be payable solely out of the proceeds derived from this Lease Agreement and the sale of the Bonds):

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions.** In addition to the words and terms defined in the Indenture, or elsewhere defined in this Lease Agreement, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

*“Act”* means the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated Sections 14-164-201 *et seq.* (1998 Repl. & 2013 Supp.), and all acts supplemental thereto or amendatory thereof.

*“Affiliate”* means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person and “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

*“Authorized Lessee Representative”* means “Authorized Company Representative,” as defined in the Indenture.

*“Authorized Lessor Representative”* means “Authorized Issuer Representative,” as defined in the Indenture.

*“Bond”* or *“Bonds”* means any or all of the City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, in the aggregate principal amount of not to exceed \$150,000,000, to be issued pursuant to the Indenture.

*“Bond Counsel”* means any firm of nationally recognized bond counsel expert in the field of municipal finance reasonably acceptable to the Lessor.

*“Bond Documents”* means, collectively, the Bonds, the Indenture, this Lease Agreement, the Bond Purchase Agreement and the PILOT Agreement.

*“Bond Fund”* means the fund by that name created by Section 4.01 of the Indenture.

*“Bondholder”* or *“Owner”* means the person in whose name any Bond is registered upon the registration books maintained pursuant to the Indenture.

*“Bond Purchase Agreement”* means the Bond Purchase Agreement dated December \_\_, 2013, between the Lessor and the Original Purchaser, and approved by the Lessee.

*“Buildings”* means those certain buildings or additions to buildings and fixtures and all other facilities forming a part of the Project, and not constituting part of the Leased Equipment,

which exist or are envisioned by this Lease Agreement to be situated on the Land, as they may at any time exist.

*“Completion Date”* means the date of completion of the acquisition, construction and equipping of the Project, as that date shall be certified as provided in Section 4.3 hereof.

*“Costs of Issuance”* means all costs incurred in connection with the borrowing, including all costs incurred in connection with the authorization, sale and issuance of, and draws under, the Bonds and the transactions contemplated in the Indenture, including, but not limited to, (a) counsel fees and expenses (including Bond Counsel, as well as any other specialized counsel fees and expenses incurred in connection with the borrowing), (b) the initial fees and expenses of the Trustee, and (c) costs incurred in connection with the required public approval process (e.g., publication costs for public notices).

*“Draw Certificate”* means, with respect to each draw under the Bonds, a certificate of the Company, approved by the Owners of all of the Bonds, such approval to be evidenced by their execution thereof, in substantially the form attached to the Indenture as Exhibit C.

*“Indenture”* means the Trust Indenture dated as of December 1, 2013, by and between the Lessor and the Trustee, relating to the Bonds, and any indentures supplemental thereto.

*“Land”* means the real estate described in Exhibit “A” hereto annexed and by this reference made a part of this Lease Agreement.

*“Lease Agreement”* means this Lease Agreement and all amendments and supplements hereto.

*“Lease Term”* means the duration of the Lessee’s right to occupy and use the Buildings and Equipment constituting the Project as specified in Section 5.1 hereof.

*“Leased Equipment”* means those items of machinery, equipment, furniture and furnishings described in Exhibit B hereto annexed (as it may be amended from time to time), and maintenance and repair parts related thereto, acquired and installed in the Buildings or elsewhere on the Land with proceeds from the sale of Bonds (or reimbursed with proceeds from the sale of the Bonds), and any item of machinery, equipment, furniture or furnishings acquired and installed in the Buildings or elsewhere on the Land in substitution therefor pursuant to the provisions of Sections 4.1 and 6.2 hereof, but not including the Lessee’s own machinery, equipment, furniture and furnishings installed under the provisions of Section 6.1(b) hereof. All Leased Equipment shall be identified in a ledger maintained by the Lessee.

*“Lessee”* means Gerber Products Company, a Michigan corporation, and any surviving, resulting or transferee corporation as provided in Section 8.2 hereof.

*“Lessor”* means the City of Fort Smith, Arkansas, a municipal corporation organized and existing under the laws of the State of Arkansas.

“*Net Proceeds*” means, with respect to any insurance award, the gross proceeds from the insurance award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such gross proceeds.

“*Original Purchaser*” means Nestle Capital Corporation, a corporation organized and existing under the laws of the State of Delaware, the original purchaser of the Bonds.

“*Outstanding,*” when used in reference to the Bonds, means, as at any particular date, the aggregate of all Bonds authenticated and delivered under the Indenture except:

- (a) those cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation;
- (b) those deemed to be paid in accordance with Article VIII of the Indenture;  
and
- (c) those in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture.

“*Person*” means natural persons, firms, partnerships, associations, corporations, trusts, limited liability companies and public bodies.

“*PILOT Agreement*” means the Agreement for Payments in Lieu of Taxes dated December \_\_, 2013, by and between the Lessor and the Lessee.

“*Project*” means the Buildings and the Leased Equipment, and any other structure now or hereafter located on the Land in connection with such Project, and all real and personal property deemed necessary in connection therewith, as they may at any time exist, but not including Lessee’s own machinery, equipment, furniture and furnishings installed under the provisions of Section 6.1(b) hereof.

“*Project Costs*” means all costs and items permitted to be financed under the provisions of the Act, including, but not limited to: (i) the cost of the acquisition, construction, repair, renovation, remodeling, expansion or improvement of all Buildings and other structures to be used as or in conjunction with the Project; (ii) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which are necessary or incident to providing such Project; (iii) the cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of the Project; (iv) the cost of all Leased Equipment and the cost of placing the same in operation; (v) Costs of Issuance with respect to each draw under the Bonds to finance the Project; and (vi) all direct and indirect costs of Lessor incurred in connection with providing the Project, including without limitation reasonable sums to reimburse Lessor for time spent by its agents or employees with respect to providing such Project and the financing thereof.

“*Project Period*” means the period between (i) the earlier of the beginning of the acquisition, construction and equipping of the Project or the date on which the Bonds are first delivered to the Original Purchaser, and (ii) the Completion Date.

“*Trustee*” means The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee under the Indenture, its successors in trust and their assigns.

“*Unassigned Rights*” means the rights of the Lessor under Section 8.6 hereof.

**Section 1.2. Use of Words.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “bond,” “owner,” “holder,” and “person” shall include the plural as well as the singular number.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations by Lessor.** Lessor makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Lessor is a political subdivision and a body corporate and politic organized and existing under the Constitution and laws of the State of Arkansas and has authority under the Act to acquire, construct and equip industrial projects and to issue its revenue bonds to finance the acquisition, construction and equipping of such projects. Any bonds so issued are payable solely out of the revenues derived from the lease of the projects and the proceeds derived from the sale of said bonds, and shall not constitute an indebtedness of the Lessor within the meaning of any Arkansas constitutional provision or statutory limitation, and shall never constitute or give rise to a pecuniary liability of the Lessor or a charge against its general credit or taxing powers.

(b) The Lessor will perform all of its obligations with reference to the acquisition, construction and equipping of the Project specified in Article IV of this Lease Agreement.

(c) Notwithstanding anything herein contained to the contrary, it is the intention of the Lessor that any obligation it may hereby incur for the payment of money shall not be a general debt on its part but shall be payable solely from the proceeds derived from this Lease Agreement and the proceeds of draws under the Bonds.

(d) The Lessor has been induced to enter into this undertaking by the commitment of the Lessee to acquire, construct and equip certain industrial facilities on the Land within the jurisdiction of the Lessor for use in connection with the Lessee’s infant and toddler foods manufacturing and packaging business.

(e) In order to furnish necessary moneys for the payment of Project Costs and the expenses of authorizing and issuing the Bonds, the Lessor has authorized the issuance of the Bonds.

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Lessor's interest in this Lease Agreement (except for the Unassigned Rights), and the revenues and receipts derived by the Lessor from the leasing of the Project, will be pledged to the Trustee as security for payment of the principal of and interest on the Bonds.

(g) The Lessor will not pledge the amounts derived from this Lease Agreement other than to secure the Bonds.

**Section 2.2 Representations by Lessee.** The Lessee makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Lessee is a corporation duly incorporated and existing under the laws of the State of Michigan, is in good standing under its articles of incorporation and under the laws of the State of Michigan, and is in good standing and authorized to do business in the State of Arkansas, and has the power to enter into this Lease Agreement and the other Bond Documents to which it is a party, and to perform all of its obligations contained herein and therein, and by proper corporate action, has been duly authorized to execute and deliver this Lease Agreement and the other Bond Documents to which it is a party.

(b) The leasing by the Lessor of the Project to the Lessee is an inducement to the Lessee to acquire, construct and equip certain industrial facilities on the Land within the jurisdiction of the Lessor for use in connection with the Lessee's infant and toddler foods manufacturing and packaging business.

(c) The Lessee currently intends to operate the Project upon its completion as a component of its manufacturing and packaging operations until the expiration or earlier termination of the Lease Term as provided herein and/or, with the Lessor's written consent, for such other lawful uses as the Lessee may deem appropriate.

(d) The Lessee is not subject to any charter, bylaw or contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Lessee from entering into this Lease Agreement or the other Bond Documents to which it is a party, or performing any of its obligations hereunder or thereunder, and covenants that, anything in this Lease Agreement to the contrary notwithstanding, so long as any of the Bonds are Outstanding there shall be no abatement or reduction of the rent payable by the Lessee hereunder.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or public board or body, pending or, to the best knowledge of the Lessee, threatened against or affecting the Lessee, nor to the best of knowledge of the Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially and adversely affect the transactions contemplated by this Lease Agreement, or which, in any way, would materially and adversely affect the validity or enforceability of the

Bond Documents, or any other agreement or instrument to which the Lessee is a party used or contemplated for use in the consummation of the transactions contemplated hereby.

(f) The Project is currently expected to consist of buildings and equipment and improvements suitable for industrial uses, the cost of which is now estimated to be approximately \$\_\_\_\_\_.

(g) The proceeds of each draw under the Bonds will be used only for payment of Project Costs related to such draw and Costs of Issuance.

(h) To the best knowledge of the Lessee, the Project complies, or will so comply prior to commencement of operation, with all presently applicable building and zoning ordinances where failure to comply would have a materially adverse effect on the Lessee's ability to utilize the Project for the purpose intended.

(i) The Lessee agrees to cooperate with all reasonable requests of the Lessor with respect to the performance of the Lessor's obligations under the Indenture.

**Section 2.3. Intention.** It is intended by the parties hereto that this Lease Agreement and all actions taken hereunder be consistent with and pursuant to that ordinance of the Lessor authorizing the issuance of the Bonds, and that substantially all of the proceeds of the Bonds be used to provide property of a character subject to the allowance for depreciation.

**ARTICLE III**

**DEMISING CLAUSES AND WARRANTY OF TITLE**

**Section 3.1. Demise of Project.** The Lessor demises and leases to the Lessee, and the Lessee leases from the Lessor, the Project at the rental set forth in Section 5.3 hereof and in accordance with the provisions of this Lease Agreement. The Lessor agrees that the Lessee shall have possession of the Project whenever such possession is desired by the Lessee.

THE LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE LESSEE'S PURPOSES OR THE ACTUAL OR DESIGNED CAPACITY OF THE PROJECT, OR THE FITNESS OF THE PROJECT FOR ANY PARTICULAR PURPOSE OF THE LESSEE.

**Section 3.2. Warranty of Title.** The Lessor warrants that it lawfully owns and is lawfully possessed of the Land and that it has good and merchantable title and estate therein, free from all encumbrances, but it has no liability in regard thereto.

**Section 3.3. Quiet Enjoyment.** The Lessor covenants and agrees that the Lessee, upon paying the rent provided herein and upon performing and observing the covenants, conditions and agreements hereof, shall and may peaceably hold and enjoy the Project during the Lease

Term without any interruption or disturbance, subject however, to the terms of this Lease Agreement.

**Section 3.4. Ownership of Tax Benefits.** It is the intention of the parties that any tax benefits resulting from the ownership of the Project and any tax credit or comparable credit which may ever be available shall accrue to the benefit of the Lessee, and the Lessee may, and the Lessor upon advice of counsel may, make any election and take any other action as may be necessary to entitle the Lessee to have such benefit and credit.

**Section 3.5. Authorized Lessee and Lessor Representatives.** All requests, approvals and agreements required on the part of the Lessee or the Lessor hereunder shall be in writing, signed by the Authorized Lessor Representative and/or Authorized Lessee Representative, as appropriate, granting such approval or entering into such agreement. The Lessor and the Lessee shall, concurrently with the delivery of this Lease Agreement, notify each other and the Trustee of the Authorized Representative of each. It is agreed that each party may have more than one Authorized Representative and may change its Authorized Representative or Representatives from time to time, with each such change to be in writing forwarded to the other party and the Trustee. The Authorized Representative of each party so designated shall be authorized to enter into and execute any contracts or agreements or to grant any approvals or to take any action for and on behalf of the party hereto represented by him, and the other party to this Lease Agreement shall be entitled to rely upon the duly designated Authorized Representative as having full authority to bind the party hereto represented by him.

## ARTICLE IV

### ACQUISITION, CONSTRUCTION AND EQUIPPING OF PROJECT; DRAWS UNDER BONDS

**Section 4.1. Agreement to Acquire, Construct and Equip the Project.** The Lessee shall make draws of Bond proceeds as provided in the Indenture using the form of Draw Certificate set forth as Exhibit C to the Indenture. After the proceeds of each draw under the Bonds are available, the Lessor (or the Lessee, as agent for Lessor) will enter into or accept the assignment of contracts or purchase orders having terms, conditions, drawings, specifications and other provisions designated and prescribed by the Lessee for acquiring, constructing and equipping the Project. The Lessee may amend, modify, authorize or undertake any changes, alterations, extras or additions to or from such contracts. All payments necessary to acquire, construct and equip the Project shall be made from Bond proceeds at the direction of the Lessee or reimbursed to the Lessee from such Bond proceeds for all expenditures made by it in connection with the Project. Title to all machinery, equipment and other personal property of every nature paid for out of Bond proceeds (either by direct payment or by virtue of reimbursement to the Lessee) shall, as directed by the Lessee, be vested in, or be transferred to, the Lessor, and Exhibit B hereto shall be amended to reflect such ownership. The obligations of the Lessor hereunder are subject to the provisions of this Lease Agreement limiting the obligations of the Lessor to the extent of moneys drawn under the Bonds.

The Lessee, with the cooperation of Lessor when necessary, shall obtain all necessary approvals from any and all governmental agencies requisite to the acquisition, construction and

equipping of the Project, and the Project shall be acquired, constructed and equipped in compliance with all State of Arkansas and local laws, ordinances and regulations applicable thereto.

**Section 4.2. Disbursement of Proceeds of Draws Under Bonds.** All proceeds of each draw under the Bonds shall be immediately paid (or reimbursed to the Lessee) for Project Costs. The Lessee shall maintain complete records, open to inspection by the Lessor or the Trustee at any time upon one (1) day's notice during the Lessee's regular business hours, of all draws and, with respect to each individual draw, the following:

- (a) the identity of the person(s) to whom such draw or any portion thereof was paid;
- (b) the amount paid to each such person; and
- (c) a description of the work, material or equipment for which each such payment was made and, if any portion of any such payment constituted reimbursement to the Lessee for Project Costs previously paid by the Lessee, information similar to that described in (a) and (b) above with respect to each payment for which the Lessee is being reimbursed.

The Lessee's making of any draw of Bond proceeds shall constitute the Lessee's representation and warranty that each payment or reimbursement made therefrom will be for Project Costs not previously paid or reimbursed.

**Section 4.3. Establishment of Completion Date.** The Completion Date shall be evidenced by a certificate signed by an Authorized Lessee Representative stating that (i) acquisition and construction of the Project has been completed and all costs of labor, services, materials and supplies used in such acquisition and construction have been paid, (ii) all equipment for the Project has been installed to the Lessee's satisfaction and all costs and expenses incurred in the acquisition and installation of such equipment have been paid, and (iii) all other facilities necessary in connection with the Project have been acquired, constructed and equipped and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. Forthwith upon completion of the acquisition, construction and equipping of the Project, Lessee shall cause such certificate to be furnished to the Trustee.

**Section 4.4. Lessee Required to Pay in Event Amounts Insufficient.** In the event Bond proceeds available for payment of the Project Costs shall not be sufficient to pay Project Costs in full, the Lessee shall complete the Project and pay that portion of Project Costs in excess of the Bond proceeds available therefor. The Lessor makes no warranty, either express or implied, that Bond proceeds available for the payment of Project Costs will be sufficient to pay all of such Project Costs. The Lessee agrees that if after exhaustion of Bond proceeds, the Lessee should pay any portion of the Project Costs pursuant to the provisions of this Section 4.4, the Lessee shall not be entitled to any reimbursement therefor from the Lessor or the Owners of

any of the Bonds, nor shall the Lessee be entitled to any diminution of the amounts payable under Section 5.3 hereof.

**Section 4.5. Enforcement of Contracts.**

(a) The Lessor covenants that it will take any action and institute any proceedings requested by the Lessee necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work. All expenses incurred by the Lessor in connection with the performance of its obligations under this Section 4.5(a) may be considered part of the Project Costs, and the Lessor agrees that the Lessee may, from time to time, in its own name, or in the name of the Lessor, take such action as may be necessary or advisable, as determined by the Lessee, to insure the construction of the Project in accordance with the terms of the construction contracts and the installation of machinery and equipment in accordance with any applicable contract pertaining thereto, to insure the peaceable and quiet enjoyment of the Project for the term of this Lease Agreement. All costs and expenses incurred by the Lessee in connection therewith may be considered part of the Project Costs.

(b) The Lessor will assign and extend to the Lessee any vendor's warranties received by the Lessor in connection with machinery and equipment purchased by the Lessor for the Project, together with any warranties given by contractors, manufacturers or service organizations who perform construction work or install any machinery and equipment on or in the Project. If requested, the Lessor will execute and deliver instruments of assignment to the Lessee to accomplish the foregoing. All such warranties shall inure to the benefit of the Lessee.

**Section 4.6. Agreement to Issue Bonds; Application of Initial Proceeds.** In order to provide funds for payment of the Project Costs, the Lessor, concurrently with the execution of this Lease Agreement, will issue, sell and deliver the Bonds and deliver the proceeds of the initial draw thereunder (as requested by the Lessee pursuant to a Draw Certificate) to the Lessee to pay, or to reimburse the Lessee for the payment of, Project Costs.

**Section 4.7. Subsequent Draws Under Bonds.** The Lessee may request additional draws under the Bonds to pay Project Costs and Costs of Issuance, at any time prior to the maturity of the Bonds, by delivering completed Draw Certificates to the Trustee and the Original Purchaser, not less than five (5) days prior to the requested date of such draw.

**ARTICLE V**

**EFFECTIVE DATE OF LEASE AGREEMENT;  
LEASE TERM; RENTAL PROVISIONS**

**Section 5.1. Effective Date of Lease Agreement; Duration of Lease Term.** This Lease Agreement shall become effective upon its delivery, and the leasehold estate created herein shall then begin, and, subject to the provisions of this Lease Agreement (including particularly Section 5.3 hereof and Articles VII, X and XI hereof), shall continue until the earlier

of (a) such date as payment has been made in full of the Bonds or provision for such payment has been made as provided in the Indenture or (b) at midnight, Fort Smith, Arkansas time, December 31, 20\_\_\_. The Lessee has the option to terminate this Lease Agreement at any time as provided in Section 11.4 hereof.

**Section 5.2. [Reserved].**

**Section 5.3. Rents and Other Amounts Payable.**

(a) During the Lease Term, on or before 10:00 a.m., New York City time, on each December 1, commencing December 1, 20\_\_\_, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Lessee shall pay to the Trustee, by wire transfer of immediately available funds, for the account of the Lessor, as basic rent for the Project, an amount equal to the principal of, including redemption price if applicable, and interest on the Bonds coming due on such December 1. In the event any basic rental payment under this Section shall be insufficient to pay the total amount payable on the Bonds on such December 1, and if at any such date the balance in the Bond Fund is insufficient to make required payments on such date, the Lessee shall forthwith pay any such deficiency. The Lessee agrees to pay all amounts payable to the Trustee, the Registrar and the Paying Agent pursuant to Section 10.04 of the Indenture or any other provision of the Indenture.

(b) Notwithstanding the foregoing subsection (a), so long as all of the Outstanding Bonds are owned by an Affiliate of the Lessee, the Lessee may satisfy the requirements of subsection (a) by making a like payment on or before any such due date directly to the Bondholder by wire or other transfer of immediately available funds or by means of net settlement through entries made on the books of the Lessee and the Bondholder, respectively. Notice of the making of any such direct payment shall be given by the Lessee to the Trustee contemporaneously with the delivery of the payment.

(c) In the event the Lessee should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon at the rate borne by the Bonds.

**Section 5.4. Obligations of Lessee Hereunder Unconditional.** The obligations of the Lessee to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and the payments required in Section 5.3 shall be certainly payable on the dates and at the times specified, without notice or demand, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including, but without limiting the generality of the foregoing:

- (a) The unavailability of the Project, or any part thereof, for use by the Lessee at any time by reason of the failure to complete the overall industrial project by any particular time or at all or by reason of any other contingency, occurrence or circumstance whatsoever;
- (b) Damage to or destruction of the Project, or any part thereof;
- (c) Legal curtailment of the Lessee's use of the Project, or any part thereof;
- (d) Change in the Lessor's legal organization or status;
- (e) Any termination of this Lease Agreement for any reason whatsoever;
- (f) Failure of consideration or commercial frustration of purposes; or
- (g) Any default of the Lessor under this Lease Agreement or any other fault or failure of the Lessor whatsoever.

Nothing contained in this Section shall be construed to release the Lessor from the performance of any of the provisions of this Lease Agreement on its part to be performed.

The Lessee covenants that it will not enter into any contract, indenture or agreement of any nature whatsoever which shall in any way restrict or prevent it from performing any of its obligations under this Lease Agreement.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, REMOVALS, IMPOSITIONS AND INSURANCE

#### Section 6.1. Maintenance and Modifications of Project by Lessee.

- (a) The Lessee agrees that during the Lease Term it will at its own expense (i) keep the Project in reasonably safe condition as its operations shall permit and (ii) keep the Buildings and the Leased Equipment and all other improvements forming a part of the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof as the Lessee shall deem appropriate.
- (b) Subject to the provisions of Section 6.2 hereof, the Lessee may from time to time, in its sole discretion and at its own expense, make any additions or modifications at the Project location, including installation of additional machinery, equipment, furniture or fixtures in the Buildings or on the Land, which it may deem desirable for its business purposes. All machinery, equipment, furniture and fixtures so installed by Lessee shall remain the sole property of the Lessee (other than interests of any secured party) in which the Lessor shall have no interest, and may be sold, encumbered, modified or removed at any time; provided that any damage to the Project occasioned by any such modification or removal shall be repaired by the Lessee at its own expense.

(c) The Lessee will not permit any mechanics', materialmen's or other liens to be established or remain against the Project for labor or materials furnished in connection with any addition, modification, improvement, repair, renewal or replacement so made by it; provided, that if the Lessee shall first notify the Lessor of its intention so to do, the Lessee may in good faith contest any mechanics' or other liens filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Lessor will cooperate fully with the Lessee in any such contest.

**Section 6.2. Removal of Leased Equipment.** The Lessor shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary Leased Equipment. In any instance where the Lessee in its sound discretion determines that any items of Leased Equipment have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Lessee may remove such items of Leased Equipment from the Buildings and the Land and (on behalf of the Lessor) sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Lessor therefor, provided that the Lessee may substitute (either by direct payment of the costs thereof or by advancing to the Lessor the funds necessary therefor) and install anywhere in the Buildings or on the Land other machinery or equipment having equal or greater utility (but not necessarily having the same function) in the operation of the Project as a modern industrial facility (provided such removal and substitution shall not impair the operating unity of the remaining property), all of which substituted machinery or equipment shall become a part of the Leased Equipment. The removal from the Project of any portion of the Leased Equipment shall not entitle the Lessee to any abatement or diminution of the rents payable under Section 5.3 hereof.

**Section 6.3. Impositions.** The Lessee shall, during the Lease Term, bear, pay and discharge, before the delinquency thereof, all special assessment taxes lawfully levied and assessed against the Project which may be paid in installments. The Lessee shall be required to pay only such installments thereof as become due and payable during the Lease Term as and when the same become due and payable. Any impositions which Lessee is required to bear, pay and discharge, shall be remitted directly to the authority which is entitled to the payment thereof.

Within thirty (30) days after the last day for payment, without penalty or interest, of an imposition which the Lessee is required to bear, pay and discharge pursuant to the terms hereof, the Lessee shall deliver to the Lessor, upon its written request, a reproduced copy of the statement issued therefor duly receipted to show the payment thereof.

The Lessee shall have the right, in its or the Lessor's name, to contest in good faith the validity or amount of any imposition which the Lessee is required to bear, pay and discharge pursuant to the terms of this Section by appropriate legal proceedings; provided the Lessee, before instituting any such contest, gives the Lessor written notice of its intention so to do, and provided further the Lessee diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and promptly pays any final judgment enforcing the imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Lessee shall hold the Lessor whole and harmless from any costs and expenses the Lessor may incur related to any such contest.

The Lessor covenants that it will not part with title to the Project or any part thereof during the Lease Term or take any other affirmative action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Project or any part thereof.

**Section 6.4. Insurance Required.** During the Project Period and throughout the Lease Term, the Lessee shall keep the Project continuously insured against such risks as are customarily insured against by business of like size and type, paying as the same become due all premiums in respect thereto.

Nothing in this Section 6.4 or any other portion of this Lease Agreement shall be construed to prevent the Lessee from including the Project under the Lessee's blanket forms of insurance coverage, provided that the requirements of this Section 6.4 be complied with under such blanket coverage.

**Section 6.5. Application of Net Proceeds of Insurance.** The Net Proceeds of the insurance required in Section 6.4 hereof shall be applied as follows: (i) Net Proceeds with respect to casualty losses shall be applied as provided in Section 7.1 hereof, and (ii) Net Proceeds of any other insurance required in Section 6.4 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 6.6. Additional Provisions Regarding Insurance.** All insurance required in Section 6.4 hereof shall be taken out and maintained in generally recognized responsible insurance companies selected by the Lessee. With the Lessor's written consent, which shall not be unreasonably withheld, the Lessee shall have the right to self-insure.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 7.1. Damage and Destruction.** If the Project is destroyed (in whole or in part) or is damaged by fire or other casualty, the Lessee, subject to Section 11.2(a) hereof, (i) will promptly repair, rebuild or restore the property damaged to substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity or productive capacity or the character of the Project and (ii) will apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional moneys of the Lessee necessary therefor. All Net Proceeds of insurance resulting from claims for such losses shall be paid to the Lessee. In the event said Net Proceeds are not sufficient to pay in full the cost of such repair, rebuilding or restoration, the Lessee shall nonetheless complete the work thereof and shall pay that portion of the cost thereof in excess of the amount of the Net Proceeds. The Lessee shall not, by reason of the payment of such excess cost, be entitled to any reimbursement from the Lessor or any abatement or diminution of the rents payable under Section 5.3 hereof.

Any balance of such Net Proceeds remaining after payment of all the costs of any such repair, rebuilding or restoration shall be retained by the Lessee.

**Section 7.2. Lessor's Covenant Not to Condemn.** The Lessor covenants that during the Lease Term it will not take or condemn any part of the Land, or attempt to do so.

## ARTICLE VIII

### SPECIAL COVENANTS

**Section 8.1. Inspection of Project.** The Lessee agrees that the Lessor and its duly authorized agents shall have the right, upon twenty-four (24) hours notice to the Lessee, at all reasonable times during business hours to enter upon the Land and to examine and inspect the Project without interference or prejudice to the Lessee's operations. The Lessee further agrees that the Lessor and its duly authorized agents who are acceptable to the Lessee shall have such rights of access to the Project as may be reasonably necessary to cause to be completed the acquisition, construction and equipping provided for in Section 4.1 hereof.

**Section 8.2. Lessee to Maintain Corporate Existence.** The Lessee will maintain its corporate existence and will not dissolve, sell, lease or otherwise dispose of all or substantially all of its business and assets or consolidate with or merge into another corporation or limited liability company; provided, however, the Lessee may, without the consent of the Lessor or the Trustee, and without violating this Section 8.2, consolidate with or merge into another corporation or limited liability company, or sell to another corporation or limited liability company all or substantially all of its business and assets, on the condition that such surviving or acquiring entity shall expressly assume in writing all of the obligations of the Lessee contained in this Lease Agreement. In the event of consolidation with or merger into another entity or the sale of all, or substantially all, of its business and assets by the Lessee, as permitted by this Section 8.2, and the assumption by the surviving or acquiring entity of the obligations hereof, the Lessee shall be relieved from all further obligations hereunder. Nothing in this Section shall be deemed to prevent or restrict the Lessee from selling or issuing securities.

**Section 8.3. [Reserved].**

**Section 8.4. [Reserved].**

**Section 8.5. Location of Project.** The Lessee covenants that proceeds of draws under the Bonds shall be used only with respect to facilities located within the corporate boundaries of the Lessor.

**Section 8.6. Lessee to Hold Lessor Harmless.** The Lessee shall at all times keep and hold the Lessor harmless from any and all claims and demands, losses and expenses arising out of, or connected with, the Lessee's operations at the Project, or as a result of anything claimed to be done or omitted to be done by the Lessee, provided the Lessor shall in each instance give the Lessee prompt written notice of any such claim or demand; and the Lessor shall cooperate with the Lessee in the investigation of such claim.

In the event of any claim, demand or action arising out of an occurrence covered by any of such insurance of which the Lessor has knowledge, the Lessor agrees to give the Lessee prompt notice, in writing, and to cooperate with the Lessee in the investigation thereof.

**Section 8.7. Trustee, Paying Agent and Registrar Indemnity.** The Lessee releases the Trustee, Paying Agent and Registrar from, and covenants and agrees that the Trustee, paying Agent and Registrar shall not be liable for, and covenants and agrees, to the extent permitted by law, to indemnify and hold harmless the Trustee, Paying Agent and Registrar and their directors, officers, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with (1) the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof (including without limitation any of the foregoing relating to any federal, state or local environmental law, rule or regulation); or (2) the issuance of the Bonds or any certifications, covenants or representations made in connection therewith and the carrying out of any of the transactions contemplated by the Bonds and this Lease Agreement. The Lessee further covenants and agrees, to the extent permitted by law, to pay or to reimburse the Trustee, Paying Agent and Registrar and their officers, employees and agents for any and all costs, reasonable attorneys fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions, except to the extent that the same arise out of the Trustee's, Paying Agent's or Registrar's willful misconduct or negligence. The provisions of this Section shall survive the retirement of the Bonds and the expiration of this Lease Agreement.

The indemnified party shall promptly notify the Lessee in writing of any claim or action covered by this indemnity and brought against the indemnified party, or in respect of which indemnity may be sought against the Lessee, setting forth the particulars of such claim or action, and the Lessee will assume the defense thereof, including the employment of counsel satisfactory to the indemnified party and the payment of all expenses. The indemnified party may employ separate counsel in any such action and participate in the defense thereof, and the fees and expenses of such counsel shall be payable by the Lessee.

**Section 8.8. Accounts and Records.** The Lessee shall cause proper books of account and records to be kept of all transactions relating to the acquisition, construction and equipping of the Project.

## ARTICLE IX

### ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING; REDEMPTION OF BONDS; PREPAYMENT AND ABATEMENT OF RENT

**Section 9.1. Assignment and Subleasing.** The Lessee shall be permitted to transfer, assign and sublet the Project to any Affiliate or successor to the interests of the Lessee by merger or consolidation or acquisition of the Lessee. The Lessee may not otherwise assign this Lease Agreement or sublet the leased premises or part thereof without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no assignment or subletting and no dealings or transactions between the Lessor and any sublessee or assignee shall relieve the Lessee of any of its obligations under this Lease Agreement and the Lessee shall remain as fully bound as though no assignment or subletting had been made, and

performance by any assignee or sublessee shall be considered as performance *pro tanto* by the Lessee.

It is understood and agreed that this Lease Agreement (and the rents hereunder) will be assigned and pledged to the Trustee as security for the payment of the principal of and interest on the Bonds, but otherwise the Lessor shall not, without the prior written consent of the Lessee, assign, encumber, sell or dispose of all or any part of its rights, title and interest in and to the Project and this Lease Agreement, except to the Lessee in accordance with the provisions of this Lease Agreement and to the Trustee under the Indenture, but subject to the provisions set forth below, without the prior written consent of the Lessee.

**Section 9.2. Restrictions on Sale, Mortgage or other Conveyance of Project by Lessor.** The Lessor agrees that, except for the assignment of this Lease Agreement and the rentals hereunder to the Trustee pursuant to the Indenture, it will not sell, assign, mortgage, pledge, transfer or convey the Project during the Lease Term, except as specifically provided in this Lease Agreement.

**Section 9.3. Redemption of Bonds.** The Lessor, at the request at any time of the Lessee and if the same are then callable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the then Outstanding Bonds, as may be specified by the Lessee, on the earliest redemption date on which such redemption may be made under such applicable provisions or upon the date set for the redemption by the Lessee pursuant to Section 11.2 hereof.

**Section 9.4. Prepayment of Rents.** To permit the redemption of Bonds pursuant to the exercise of any options of the Lessee hereunder, and solely for that purpose, there is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time it may choose, to prepay all or any part of the rents payable under Section 5.3 hereof, and the Lessor agrees that it will accept such prepayment of rents when the same are tendered by the Lessee. All rents so prepaid shall be credited on the rental payments specified in Section 5.3 hereof, in the order of their maturities, and shall be used for the redemption of the Bonds on the earliest possible redemption date in accordance with the Indenture. At any time when the Bonds have been paid in full (or provision for the payment of the Bonds has been made as provided in Article VIII of the Indenture), the Lessee shall have the option to terminate this Lease Agreement at any time as provided in Section 11.4 hereof.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

**Section 10.1. Events of Default Defined.** The following shall be “events of default” under this Lease Agreement and the terms “event of default” or “default” shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

- (a) Failure by the Lessee to pay the basic rent or any part thereof payable hereunder;

(b) Failure by the Lessee to pay any additional rent due hereunder and continuation of said failure for a period of seven (7) days after notice by certified or registered mail sent by the Lessor or the Trustee;

(c) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (a) or (b) of this Section, for a period of sixty (60) days after the mailing of notice by certified or registered mail, specifying such failure and requesting that it be remedied, to the Lessee by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration;

(d) An event of default shall occur under the Indenture;

(e) A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days; or

(f) The Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Lessee or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing.

The foregoing provisions of paragraph (c) are subject to the following limitations: If by reason of *force majeure* the Lessee is unable in whole or in part to carry out its agreements on its part herein contained, other than the obligations on the part of the Lessee contained in Article V and Sections 6.3 and 6.4 hereof, the Lessee shall not be deemed in default during the continuance of such inability. The term *force majeure* as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of Arkansas or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Lessee. The Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessee, and the Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to

the demands of the opposing party or parties when such course is in the judgment of the Lessee unfavorable to the Lessee.

**Section 10.2. Remedies on Default.** Whenever any event of default shall happen, the Lessor (with the consent of the Bondholders if the Indenture has not been discharged) may take any of the following remedial steps:

- (a) Declare all installments of basic and additional rent payable for the remainder of the term to be immediately due and payable, whereupon the same shall become immediately due and payable;
- (b) Re-enter and take possession of the Project without terminating this Lease Agreement, and sublease any or all of the Project for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by such sublessee in such subleasing and the basic and additional rent payable by the Lessee hereunder;
- (c) Terminate the Lease Term, exclude the Lessee from possession of the Project, and use its best efforts to lease any or all of the Project to another for the account of the Lessee;
- (d) Have access to and inspect, examine and make copies of such of the books, records, accounts and data of the Lessee, as pertain to the Project; or
- (e) Take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by the Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

**Section 10.3. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time as often as may be deemed expedient.

**Section 10.4. Rentals and Damages Deposited Into Bond Fund.** The foregoing provisions of this Article relating to the receipt of moneys by the Lessor as the result of an acceleration, upon a reletting or otherwise, are each to be construed as providing that all such payments by the Lessee or others shall be made into the Bond Fund referred to in Section 4.01 of the Indenture.

**Section 10.5. Equitable Relief.** The Lessor and the Lessee shall each be entitled to specific performance and injunctive or other appropriate equitable relief for any breach or threatened breach of any of the provisions of this Lease Agreement, notwithstanding the

availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 10.6. Lessor May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Lessee or the Project, the Lessor shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Lessor (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Lessor, its agents and counsel) allowed in such judicial proceeding; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same.

## ARTICLE XI

### OPTIONS IN FAVOR OF LESSEE

**Section 11.1. [Reserved].**

**Section 11.2. Option to Acquire Lessor's Interest in Project Prior to Payment of Bonds.** The Lessee shall have, and is hereby granted, the option to acquire legal title to the entirety of the Project prior to the scheduled payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), if any of the following events shall have occurred:

(a) The Project shall have been damaged or destroyed as set forth in Section 7.1 hereof to such extent that in the judgment of the Lessee (i) it cannot be reasonably restored within a period of four months to the condition thereof immediately preceding such damage or destruction, or (ii) the Lessee is thereby prevented from carrying on its normal operation of the Project for a period of four months, or (iii) the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon pursuant to the requirements of Section 6.4 hereof, plus the amounts for which the Lessee is self-insured;

(b) Title to, or the temporary use of, all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person, firm or corporation acting under governmental authority (including such a taking as results in the Lessee being thereby prevented from carrying on its normal operations therein for a period of four months); or

(c) As a result of any changes in the Constitution of Arkansas or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), this Lease Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and

purposes of the parties as expressed in this Lease Agreement, or unreasonable burdens or excessive liabilities shall have been imposed on the Lessor or the Lessee, including without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Lease Agreement.

To exercise such option, the Lessee shall, within ninety (90) days following the events described in subparagraphs (a), (b) or (c) above, give written notice to the Lessor, and shall specify therein the date of closing such purchase, which date shall be not more than ninety (90) days from the date such notice is mailed, and shall make arrangements satisfactory to the Lessor for the giving of the required notice of redemption of the Bonds on the date of such purchase. The purchase price which shall be paid to the Lessor by the Lessee in the event of its exercise of the option granted in this Section shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to retire and redeem all the then Outstanding Bonds on the redemption date including, without limitation, principal plus accrued and unpaid interest thereon to said redemption date, plus

(2) an amount of money equal to (a) any reasonable fees of Lessor's counsel and (b) Trustee's reasonable fees and expenses, including any reasonable fees of Trustee's counsel, under the Indenture accrued and to accrue until such final payment and redemption of the Bonds.

In the event of the exercise of the option granted in this Section, any Net Proceeds of insurance or condemnation shall be paid to the Lessee.

### **Section 11.3. [Reserved].**

**Section 11.4. Option to Acquire Legal Title Upon Full Payment of Bonds.** At any time following full payment of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture) and the payment of all fees and expenses of the Trustee payable under the Indenture, including any reasonable fees of Trustee's counsel, the Lessee shall have and is hereby granted an option, exercisable at any time (including following the occurrence of an event of default hereunder or the exercise by the Lessor or the Trustee of their respective remedies in result thereof), to purchase and acquire legal title to, and Lessor agrees to sell and convey, the Project for a price of \$25.00. At the closing of such purchase, the Lessor will deliver to the Lessee or its nominee documents conveying to the Lessee or its nominee good and marketable title to the Project, subject only to the following: (i) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Lessor; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; (iii) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease Agreement; and (iv) the rights and title of any condemning authority as provided in Article VII hereof.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when sent by facsimile transmission or by first class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If intended for Lessee:

Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932  
Attention: \_\_\_\_\_  
Phone: ( ) \_\_\_ - \_\_\_\_  
Fax: ( ) \_\_\_ - \_\_\_\_

With Copy to:

Nestle Capital Corporation  
800 N. Brand Blvd.  
Glendale, CA 91203  
Attention: Treasurer – 12<sup>th</sup> Floor  
Phone: ( ) \_\_\_ - \_\_\_\_  
Fax: ( ) \_\_\_ - \_\_\_\_

If intended for Lessor:

City of Fort Smith  
P.O. Box 1908  
Fort Smith, AR 72903  
Attention: Mayor  
Phone: (479) 784-2201  
Fax: (479) 784-2430

If intended for the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38<sup>th</sup> Floor  
Pittsburgh, PA 15259  
Attention: Kerry S. Zombeck  
Phone: (412) 236-5720  
Fax: (412) 236-0870

A duplicate copy of each notice, certificate or other communication given hereunder by either the Lessor or the Lessee to the other shall also be given to the Trustee. The Lessor and the

Lessee may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

**Section 12.2. Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding upon the Lessor, the Lessee and their respective successors and assigns, subject, however, to the limitations contained in Sections 8.2, 9.1 and 9.2 hereof.

**Section 12.3. Severability.** In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 12.4. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease Agreement or in the Indenture, subsequent to the initial issuance of Bond proceeds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of all Bondholders given in the manner provided in Section 12.02 of the Indenture.

**Section 12.5. Priority of Lease Agreement.** This Lease Agreement (as it may be amended or supplemented pursuant to the provisions hereof) and the estate of the Lessee hereunder are and shall continue to be superior and prior to the Indenture (as it may be amended or supplemented).

**Section 12.6. Execution Counterparts.** This Lease Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.7. Captions.** The captions or headings of this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease Agreement.

**Section 12.8. Security Agreement; Recording and Filing.**

(a) This Lease Agreement is a security agreement under the Uniform Commercial Code of the State of Arkansas, and it is contemplated by the parties that a security interest in the rentals and other money due from the Lessee to the Lessor hereunder will be granted to Trustee pursuant to the Indenture.

(b) If so requested by the owners of all of the Bonds, the Lessee shall from time to time execute on its own behalf all required financing statements and renewals thereof with respect to the security interests granted by this Lease Agreement and file such statements or renewals thereof in all appropriate public offices. The Trustee shall have no responsibility with respect to the maintenance of any such filings.

**Section 12.9. Law Govering Construction of Lease Agreement.** This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

CITY OF FORT SMITH, ARKANSAS,  
as Lessor

By: \_\_\_\_\_  
Name: Sandy Sanders  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Name: Sherri Gard  
Title: City Clerk

GERBER PRODUCTS COMPANY,  
as Lessee

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO LEASE AGREEMENT]



ACKNOWLEDGMENT

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary Public duly commissioned, qualified and acting within and for the County and State aforesaid, appeared in person the within named \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and the \_\_\_\_\_, respectively, of Gerber Products Company, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of the company, and further stated and acknowledged that they had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(S E A L)

**EXHIBIT A****LEASED LAND**

[ANY REVISIONS NEEDED?]

The following described real estate situated in Sebastian County, Arkansas, to-wit:

**PHASE A – NORTH**

Part of Lot 1, Gerber Products No. 1 an addition to the City of Fort Smith (filed June 17, 1991), Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Northwest corner of said Lot 1 on the east right-of-way line of Fort Lane; thence S 00°03'00"W along the west line of said Lot 1, 415.60'; thence S 89°57'00"E 933.07' to the Point of Beginning; thence N 00°04'54"E 105.91'; thence S 89°55'06"E 97.67'; thence S 00°04'54"W 105.91'; thence N 89°55'06"W 97.67' to the Point of Beginning, containing 10,344 square feet more or less.

**PHASE A – SOUTH**

Part of Lot 1, Gerber Products No. 1 an addition to the City of Fort Smith (filed June 17, 1991), Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Northwest corner of said Lot 1 on the east right-of-way line of Fort Lane; thence S 00°03'00"W along the west line of said Lot 1, 751.95'; thence S 89°57'00"E 955.80' to the Point of Beginning; thence N 00°04'54"E 96.00'; thence S 89°55'06"E 143.66'; thence S 00°04'54"W 96.00'; thence N 89°55'06"W 143.66' to the Point of Beginning, containing 13,791 square feet more or less.

**PHASE B**

Part of Lot 1, Gerber Products No. 1 an addition to the City of Fort Smith (filed June 17, 1991), Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Northwest corner of said Lot 1 on the east right-of-way line of Fort Lane; thence S 00°03'00"W along the west line of said Lot 1, 607.64'; thence S 89°57'00"E 379.57' to the Point of Beginning; thence N 00°04'54"E 143.99'; thence S 89°55'06"E 527.98'; thence S 00°04'54"W 143.99'; thence N 89°55'06"W 524.98' to the Point of Beginning, containing 76,024 square feet more or less.

**EXHIBIT B**  
**LEASED EQUIPMENT**

ARTICLE I  
DEFINITIONS

Section 1.1. Definitions..... 2  
Section 1.2. Use of Words ..... 5

ARTICLE II  
REPRESENTATIONS

Section 2.1. Representations by Lessor ..... 5  
Section 2.2. Representations by Lessee ..... 6  
Section 2.3. Intention ..... 7

ARTICLE III  
DEMISING CLAUSES AND WARRANTY OF TITLE

Section 3.1. Demise of Project..... 7  
Section 3.2. Warranty of Title..... 7  
Section 3.3. Quiet Enjoyment ..... 7  
Section 3.4. Ownership of Tax Benefits ..... 8  
Section 3.5. Authorized Lessee and Lessor Representatives ..... 8

ARTICLE IV  
ACQUISITION, CONSTRUCTION AND EQUIPPING OF PROJECT;  
DRAWS UNDER BONDS

Section 4.1. Agreement to Acquire, Construct and Equip the Project..... 8  
Section 4.2. Disbursement of Proceeds of Draws Under Bonds..... 9  
Section 4.3. Establishment of Completion Date ..... 9  
Section 4.4. Lessee Required to Pay in Event Amounts Insufficient ..... 9  
Section 4.5. Enforcement of Contracts ..... 10  
Section 4.6. Agreement to Issue Bonds; Application of Initial Proceeds ..... 10  
Section 4.7. Subsequent Draws Under Bonds ..... 10

ARTICLE V  
EFFECTIVE DATE OF LEASE AGREEMENT;  
LEASE TERM; RENTAL PROVISIONS

Section 5.1. Effective Date of Lease Agreement; Duration of Lease Term ..... 10  
Section 5.2. [Reserved] ..... 11  
Section 5.3. Rents and Other Amounts Payable ..... 11  
Section 5.4. Obligations of Lessee Hereunder Unconditional ..... 11

ARTICLE VI  
MAINTENANCE, MODIFICATIONS, REMOVALS,  
IMPOSITIONS AND INSURANCE

Section 6.1. Maintenance and Modifications of Project by Lessee ..... 12  
Section 6.2. Removal of Leased Equipment ..... 13

Section 6.3. Impositions..... 13  
 Section 6.4. Insurance Required ..... 14  
 Section 6.5. Application of Net Proceeds of Insurance ..... 14  
 Section 6.6. Additional Provisions Regarding Insurance ..... 14

ARTICLE VII  
 DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1. Damage and Destruction..... 14  
 Section 7.2. Lessor’s Covenant Not to Condemn ..... 15

ARTICLE VIII  
 SPECIAL COVENANTS

Section 8.1. Inspection of Project ..... 15  
 Section 8.2. Lessee to Maintain Corporate Existence..... 15  
 Section 8.3. [Reserved] ..... 15  
 Section 8.4. [Reserved] ..... 15  
 Section 8.5. Location of Project..... 15  
 Section 8.6. Lessee to Hold Lessor Harmless ..... 15  
 Section 8.7. Trustee, Paying Agent and Registrar Indemnity ..... 16  
 Section 8.8. Accounts and Records..... 16

ARTICLE IX  
 ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING;  
 REDEMPTION OF BONDS; PREPAYMENT AND ABATEMENT OF RENT

Section 9.1. Assignment and Subleasing ..... 16  
 Section 9.2. Restrictions on Sale, Mortgage or other Conveyance of Project by  
 Lessor ..... 17  
 Section 9.3. Redemption of Bonds ..... 17  
 Section 9.4. Prepayment of Rents ..... 17

ARTICLE X  
 EVENTS OF DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined ..... 17  
 Section 10.2. Remedies on Default..... 19  
 Section 10.3. Remedies Not Exclusive..... 19  
 Section 10.4. Rentals and Damages Deposited Into Bond Fund ..... 19  
 Section 10.5. Equitable Relief ..... 19  
 Section 10.6. Lessor May File Proofs of Claim..... 20

ARTICLE XI  
OPTIONS IN FAVOR OF LESSEE

Section 11.1. [Reserved] ..... 20

Section 11.2. Option to Acquire Lessor’s Interest in Project Prior to Payment of  
Bonds ..... 20

Section 11.3. [Reserved] ..... 21

Section 11.4. Option to Acquire Legal Title Upon Full Payment of Bonds ..... 21

ARTICLE XII  
MISCELLANEOUS

Section 12.1. Notices ..... 22

Section 12.2. Binding Effect ..... 23

Section 12.3. Severability ..... 23

Section 12.4. Amendments, Changes and Modifications ..... 23

Section 12.5. Priority of Lease Agreement ..... 23

Section 12.6. Execution Counterparts ..... 23

Section 12.7. Captions ..... 23

Section 12.8. Security Agreement; Recording and Filing ..... 23

Section 12.9. Law Governing Construction of Lease Agreement ..... 23

SIGNATURES ..... 24

ACKNOWLEDGEMENTS ..... 25

EXHIBIT A LAND ..... A-1

EXHIBIT B LEASED EQUIPMENT ..... B-1

**AGREEMENT FOR PAYMENTS IN LIEU  
OF TAXES**

City of Fort Smith, Arkansas  
Fort Smith, Arkansas

Ladies and Gentlemen:

Gerber Products Company, a Michigan corporation (the “Company”), has requested the City of Fort Smith, Arkansas (the “City”), pursuant to the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended (“Act 9”), to assist the Company in the acquisition, construction and equipping of certain infant cereal production and packaging facilities within the corporate boundaries of the City (the “Project”). Specifically, the Project shall be located at the site of the Company’s existing facilities within the City at 4302 Harriet Lane and shall consist of a building expansion of approximately 127,000 square feet (located on the real property described in Exhibit A hereto) and the acquisition and installation of various items of production and packaging equipment (described in Exhibit B hereto). To provide for the permanent financing of the Project, the City has agreed to issue up to \$150,000,000 of its taxable industrial development revenue bonds (the “Bonds”) under the authority of Act 9 and other applicable law.

The Bonds will be secured by a pledge of revenues derived from the Project, including particularly lease rentals to be paid by the Company to the City under a Lease Agreement dated as of December 1, 2013 (the “Lease Agreement”), and having a term ending on December 31, 2024.

The Lease Agreement will obligate the Company to pay all taxes and assessments, general and special, levied and assessed on the Project during the term of the Lease Agreement, as well as water and sewer charges, assessments and other governmental charges and impositions. The Company and the City understand and agree that, notwithstanding such provisions in the Lease Agreement, under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to Act 9, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), and under the provisions of Arkansas Code Annotated §§14-164-701 to –704 (1998 Repl. & 2013 Supp.), the Project will be exempt from *ad valorem* taxes because it will be owned by the City and used for public purposes within the meaning of the applicable Constitutional provisions affording the exemption.

Although the City makes no representations as to the continued precedential value of such past decisions concerning the exemption from *ad valorem* taxation of industrial facilities financed pursuant to Act 9, the Company and the City agree that the Company, as lessee of the Project owned by the City, will have no *ad valorem* taxes to pay under the provisions of the Lease Agreement. The City has indicated a reluctance to lose all tax revenues which would otherwise be received if the properties involved were privately owned. Therefore, to induce the City to proceed with the issuance of the Bonds and as an inducement for the acquisition, construction, equipping and operation of the Project within the City, which will inure to the benefit of the Company (and fulfill a public purpose of the City), and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged by the City, the Company agrees with the City as follows:

1. (a) In lieu of *ad valorem* taxes that would otherwise be assessed on the Project during the term of the Lease Agreement, the Company will make annual payments to the City in an amount equal to 35% of the amount that would otherwise be due with respect to the Project real and personal property (as determined pursuant to Arkansas Code Annotated Section 14-164-704) during such year were such property not exempt from the levy of *ad valorem* taxes, with the first such payment to be due on or before the 10<sup>th</sup> day of October, 2014, with reference to tax year 2013, and subsequent annual payments to be due on or before October 10<sup>th</sup> of each year thereafter, with the final payment due on or before October 10, 2025, with reference to tax year 2024.

(b) The Company and the City hereby affirm the provisions of Section 6.2 of the Lease Agreement permitting the removal of Project machinery and equipment by the Company and the substitution of other machinery and equipment having equal or greater utility in the operation of the Project, and it is agreed that such substituted machinery and equipment shall become part of the Project and shall likewise be exempt from the payment of *ad valorem* taxes for the balance of the years of the exemption period of the replaced machinery and equipment. Such substituted machinery and equipment will be subject to payments in lieu of *ad valorem* taxes on the same basis as provided under subsection (a) above.

2. Payments to be made hereunder are not intended to be in lieu of any license, occupation or privilege taxes or fees imposed upon the Company for or with respect to its right to carry on its business in the State of Arkansas. The payments to be made by the Company to the City pursuant to this Agreement are intended to be in lieu of all *ad valorem* taxes that would have to be paid on the Project by the Company to the State of Arkansas, Sebastian County, the City and/or all other political subdivisions of the State of Arkansas entitled thereto (the "taxing authorities") if the Project was not exempt from *ad valorem* taxation under the provisions of Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to Act 9, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), and under the provisions of Arkansas Code Annotated §§14-164-701 to -704 (1998 Repl. & 2011 Supp.).

3. The City agrees to distribute each payment made by the Company hereunder among the applicable taxing authorities in the proportion that the millage levied by each bears to the total millage levied by all taxing authorities during the year of distribution.

4. The City and the Company agree to cooperate in sustaining the enforceability of this Agreement. However, if by reason of a change in the Constitution of the State of Arkansas, or a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, a change in statutory law by the General Assembly of the State of Arkansas or otherwise, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference to the taxing authorities. Furthermore, inasmuch as the payment herein agreed to be made by the

Company is intended to be in lieu of taxes, it is agreed that said payment shall not as to any year be in an amount greater than would otherwise be payable for such year in *ad valorem* taxes, in the aggregate, on account of its ownership of the Project.

5. It is recognized by the City and the Company that the payments described in Section 1(a) hereof are to be calculated on the basis of annual amounts that would otherwise be payable as *ad valorem* taxes under Arkansas law on the Project property if such property were on the tax rolls. Accordingly, because the valuation of such property is a key factor in calculating said payments, the City agrees to reasonably cooperate with the Company in any reasonable challenge to the valuation assigned to the Project property by the Sebastian County Assessor to the fullest extent permitted by Arkansas law.

6. Except with respect to the provisions regarding the final payment due by the Company as described in Section 1(a) above, this Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than a default on the part of the Company. If such termination shall be at a point constituting a portion of a tax year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such tax year that the Company was lessee of the Project prior to the termination bears to 365 days.

7. This Agreement may be amended in writing at any time by the Company and the City for any purpose permitted by Arkansas law, including the provision of different payment terms from those presently set forth herein, either during the original term of the Lease Agreement or during any extension thereof.

8. This Agreement may be assumed by successors to the Company and may be assigned by the Company, and shall be binding upon said successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the City.

9. This Agreement may be executed in counterparts. Each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas.

If the foregoing is acceptable, please so indicate by executing the acceptance set forth below, and by returning this instrument to the Company, whereupon this instrument shall constitute a valid and binding contract between the Company and the City.

**DATED:** December \_\_, 2013.

**GERBER PRODUCTS COMPANY,**  
a Michigan corporation

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED:

**CITY OF FORT SMITH, ARKANSAS**

By: \_\_\_\_\_  
Name: Sandy Sanders  
Title: Mayor

[SIGNATURE PAGE FOR AGREEMENT FOR PAYMENT IN LIEU OF TAXES]

**EXHIBIT A**

**PROJECT REAL PROPERTY**

A building addition of approximately 127,000 square feet located on the following real property:

[TO BE PROVIDED]

**EXHIBIT B**

**PROJECT MACHINERY AND EQUIPMENT**

[TO BE PROVIDED]

# Memo



**To:** Ray Gosack, City Administrator  
**From:** Jeff Dingman, Deputy City Administrator  
**Date:** 11/15/2013  
**Re:** Gerber Products Company Industrial Revenue Bonds

---

Included on the agenda for the November 19, 2013 regular meeting of the Board of Directors is an ordinance authorizing the issuance of up to \$150,000,000 in taxable Industrial Development Revenue Bonds on behalf of the Gerber Products Company and its project to expand its infant & toddler foods manufacturing and packaging capabilities at its existing facility at 4301 Harriet Lane in Fort Smith.

The City has previously indicated support of this project and, through Resolutions No. R-160-09 (August, 2009); No R-149-10 (August, 2010); and R-81-13 (June, 2013), affirmed the City's intent to assist the company in securing the necessary financing to expand its facility and continue to provide employment opportunities and other benefits to the residents of the City.

The primary advantage of industrial revenue bonds is reduced property taxes on the project. Pursuant to the Payment in Lieu of Taxes Agreement (also authorized by the proposed ordinance), the company will pay the equivalent of 35% of the normal property taxes for a period of twelve years. Approvals of the necessary Trust Indenture (between the city and the Trustee) and Lease Agreement (between the City and the Company) are also included in the language of the proposed ordinance. All of these documents are attached to this memo in draft - but substantially complete - form.

Gerber Products Company will be solely responsible for the debt service payments of the bonds. The city has no obligation to make the bond payments.

Staff recommends approval of the attached ordinance. This \$150 million dollar investment will support the board's stated priorities of fostering economic development and job creation/retention.

A representative from Gerber and the bond counsel negotiating this process intend to be present at the meeting if you have specific questions. In the meantime, please contact me if you have general questions regarding this agenda item.

RESOLUTION NO. R-169-09

**A RESOLUTION OF INTENT OF THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS REGARDING THE ISSUANCE OF BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN INDUSTRIAL FACILITY EXPANSION TO BE LOCATED WITHIN THE CITY.**

WHEREAS, the City of Fort Smith, Arkansas (the "City") is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated §§14-164-201 *et seq.* (1998 Repl. & 2005 Supp.) (the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, Gerber Products Company, a Michigan corporation (the "Company") engaged in the business of manufacturing and packaging infant and toddler food products, has evidenced its interest in acquiring, constructing and equipping additional manufacturing facilities (the "Project") to be located at its existing facility at 4301 Harriet Lane within the corporate boundaries of the City if permanent financing for the Project can be provided through the issuance of revenue bonds under the authority of the Act; and

WHEREAS, the City has previously assisted the Company in the expansion of its packaging facilities through the issuance of the City's Not to Exceed \$65,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2004; and

WHEREAS, the City desires to provide additional assistance to the Company in order to secure and develop industry within the City, and to aid in the financing of the Project under the provisions of the Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:**

Section 1. It is the City's present intention to assist the Company in the financing of the proposed Project through the issuance of industrial development revenue bonds under the authority of the Act. It is presently estimated by the Company that bonds in the aggregate principal amount of approximately \$65,000,000 would be required for this purpose. However, the City's intent is to issue the bonds from time to time, pursuant to the terms of the Act, in such amount as shall be requested by the Company for accomplishing all or any part of the Project, whether or not such amount is more or less than the above estimate and whether or not the facilities and improvements finally acquired, constructed and equipped are identical to or different from the facilities presently expected to constitute the Project.

Section 2. In conjunction with any issuance of bonds to assist in the financing of the Project, the City states its intention to enter into an agreement with the Company providing for annual payments by the Company in lieu of ad valorem taxes in an amount equal to thirty-five percent (35%) of the aggregate amount of ad valorem taxes that would otherwise be due with respect to the Project facilities but for the City's issuance of the bonds. It is the City's present

intention that the bond financing and the agreement for payments in lieu of ad valorem taxes would have a term of approximately twelve years. Any payment made in lieu of ad valorem taxes would be distributed to the political subdivisions which would have received ad valorem tax payments with respect to the Project facilities in the proportion that the millage levied by each affected political subdivision bears to the total millage levied by all affected political subdivisions.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this 4<sup>th</sup> day of August, 2009.

By: [Signature]  
Mayor

ATTEST:

By: [Signature]  
Clerk



RESOLUTION NO. R-149-10

**A RESOLUTION OF INTENT OF THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS REGARDING THE ISSUANCE OF BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN INDUSTRIAL FACILITY EXPANSION TO BE LOCATED WITHIN THE CITY.**

**WHEREAS**, the City of Fort Smith, Arkansas (the "City") is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated §§14-164-201 *et seq.* (1998 Repl. & 2009 Supp.) (the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, Gerber Products Company, a Michigan corporation (the "Company") engaged in the business of manufacturing and packaging infant and toddler food products, has evidenced its interest in acquiring, constructing and equipping additional manufacturing facilities (the "Project") to be located at its existing facility at 4301 Harriet Lane within the corporate boundaries of the City if permanent financing for the Project can be provided through the issuance of revenue bonds under the authority of the Act; and

**WHEREAS**, the City has previously assisted the Company in the expansion of its packaging facilities through the issuance of the City's Not to Exceed \$65,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2004; and

**WHEREAS**, the City desires to provide additional assistance to the Company in order to secure and develop industry within the City, and to aid in the financing of the Project under the provisions of the Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:**

Section 1. It is the City's present intention to assist the Company in the financing of the proposed Project through the issuance of industrial development revenue bonds under the authority of the Act. It is presently estimated by the Company that bonds in the aggregate principal amount of approximately \$90,000,000 would be required for this purpose. However, the City's intent is to issue the bonds from time to time, pursuant to the terms of the Act, in such amount as shall be requested by the Company for accomplishing all or any part of the Project, whether or not such amount is more or less than the above estimate and whether or not the facilities and improvements finally acquired, constructed and equipped are identical to or different from the facilities presently expected to constitute the Project.

Section 2. In conjunction with any issuance of bonds to assist in the financing of the Project, the City states its intention to enter into an agreement with the Company providing for annual payments by the Company in lieu of ad valorem taxes in an amount equal to thirty-five percent (35%) of the aggregate amount of ad valorem taxes that would otherwise be due with respect to the Project facilities but for the City's issuance of the bonds. It is the City's present

intention that the bond financing and the agreement for payments in lieu of ad valorem taxes would have a term of approximately twelve years. Any payment made in lieu of ad valorem taxes would be distributed to the political subdivisions which would have received ad valorem tax payments with respect to the Project facilities in the proportion that the millage levied by each affected political subdivision bears to the total millage levied by all affected political subdivisions.

Section 3. All resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict, particularly Resolution No. R-169-09

Section 4. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this 3<sup>rd</sup> day of August, 2010.

By: [Signature]  
Mayor

ATTEST:

By: [Signature]  
City Clerk



RESOLUTION NO. R-81-13

**A RESOLUTION AMENDING RESOLUTION NO. R-149-10  
REGARDING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS  
FOR GERBER PRODUCTS COMPANY**

WHEREAS, by the passage and approval of Resolution No. R-149-10, the board of directors stated its intent to issue approximately \$90,000,000 in industrial development revenue bonds for a Project by Gerber Products Company as described in that Resolution; and

WHEREAS, the Company's investment in the Project has grown from approximately \$90,000,000 to approximately \$150,000,000;

NOW, THEREFORE, BE IT RESOLVED by the board of directors of the City of Fort Smith, Arkansas that:

SECTION 1: Section 1 of Resolution No. R-149-10 is hereby amended to adjust the amount of industrial development revenue bonds to be issued for the Project from approximately \$90,000,000 to approximately \$150,000,000. All other provisions of Resolution No. R-149-10 shall remain in full force and effect.

SECTION 2: This Resolution shall be in full force and effect from and after its adoption.

This Resolution passed this 4<sup>th</sup> day of June, 2013.

  
Mayor

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
No Publication Required

**KUTAK ROCK LLP**

SUITE 2000  
124 WEST CAPITOL AVENUE  
LITTLE ROCK, AR 72201-3706

501-975-3000  
FACSIMILE 501-975-3001  
www.kutakrock.com

ATLANTA  
CHICAGO  
DENVER  
FAYETTEVILLE  
IRVINE  
KANSAS CITY  
LITTLE ROCK  
LOS ANGELES  
MINNEAPOLIS  
OKLAHOMA CITY  
OMAHA  
PHILADELPHIA  
RICHMOND  
SCOTTSDALE  
WASHINGTON  
WICHITA

**NORTHWEST ARKANSAS OFFICE**  
SUITE 400  
234 EAST MILLSAP ROAD  
FAYETTEVILLE, ARKANSAS 72703-4099  
479-973-4200

November 6, 2013

Dr. Benny L. Gooden  
Superintendent, Fort Smith,  
Arkansas School District  
P.O. Box 1948  
Fort Smith, AR 72902

Mr. Richard Weiss  
Director, Arkansas Department of  
Finance and Administration  
P.O. Box 3278  
Little Rock, AR 72203

Not to Exceed \$150,000,000  
City of Fort Smith, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Gerber Products Company Project)  
Series 2013

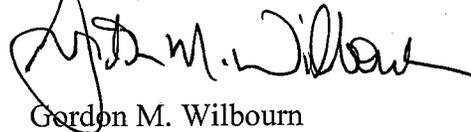
Dear Dr. Gooden and Mr. Weiss:

This letter is delivered to you on behalf of the City of Fort Smith (the "City") pursuant to Section 14-164-704(b) of the Arkansas Code of 1987 Annotated (2013 Supp.) to notify you of the consideration by the Fort Smith Board of Directors of an ordinance authorizing the issuance of the captioned bonds (the "Bonds") and, in connection therewith, the approval of an Agreement for Payments in Lieu of Taxes (the "PILOT Agreement") with respect to the real and personal property to be financed with the proceeds of the Bonds. A draft copy of the proposed PILOT Agreement is enclosed for your review. In conformity with Section 14-164-704(a)(1), the PILOT Agreement provides for annual payments in lieu of taxes equal to not less than 35% of the aggregate amount of *ad valorem* taxes that would have been collected if the property financed with the proceeds of the Bonds were on the Sebastian County tax rolls.

A public hearing on the issuance of the Bonds will take place at 6:00 p.m. on Tuesday, November 19, 2013, and the City Board of Directors meeting at which the ordinance will be considered will immediately follow. A copy of the Notice of Public Hearing to be published in the *Southwest Times Record* is also enclosed for your information.

If you have questions, please do not hesitate to contact me at 501-975-3101.

Sincerely,



Gordon M. Wilbourn

cc: Ray Gosack, City Administrator

4815-4080-3093.2

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held at the time and place set forth below before the Mayor and the Board of Directors of the City of Fort Smith, Arkansas (the "City"), on the question of the adoption of an ordinance authorizing the issuance of not to exceed \$150,000,000 in aggregate principal amount of Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013 (the "Bonds"), by the City, under the authority of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended ("Act 9"). The Bonds will be issued to provide financing for the acquisition, construction and equipping of additional manufacturing facilities of approximately 127,000 square feet (the "Project") to be located at 4301 Harriet Lane in the City and to be utilized in the production and packaging of infant and toddler foods. The Project will be owned by the City and leased to Gerber Products Company (the "Company"), pursuant to a lease agreement providing for rental payments by the Company sufficient in amount to provide for the payment of principal, premium, if any, and interest on the Bonds.

Any persons interested may express their views, both orally and in writing, on the proposed issuance of the Bonds and on the location and nature of the improvements to be financed before the Mayor and Board of Directors at a public hearing to be held on Tuesday, November 19, 2013, at 6:00 p.m., in the Fort Smith Public Schools Service Center, 3205 Jenny Lind – Building B, Fort Smith, Arkansas. At such hearing, all objections and suggestions will be heard and considered, and such action will be taken as is deemed proper in response to said suggestion and objections.

Dated: November 6, 2013

---

**PUBLICATION INSTRUCTIONS:** Publish one time on or before November 9, 2013 in a newspaper of general circulation within the City of Fort Smith, Arkansas. Send two (2) proofs of publication to Kutak Rock LLP, 124 West Capitol Avenue, Suite 2000, Little Rock, AR 72201, Attn: Gordon M. Wilbourn.

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CERTIFYING TO THE SEBASTIAN COUNTY TAX  
COLLECTOR DELINQUENT PROPERTY CLEANUP LIENS**

---

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY  
OF FORT SMITH, ARKANSAS THAT:**

**SECTION 1:** It is hereby determined by the Board of Directors that the hereinafter described properties and the amount of lien filed against each, shall be certified to the Sebastian County Tax Collector and placed on the tax books as delinquent taxes and collected accordingly. The amount of lien shown for each property shall be increased by ten percent (10%) as a penalty for collection. The amount, less three percent (3%) thereof, when so collected, shall be paid to the City by the Sebastian County Tax Collector, all in accordance with Section 16-11 of the Fort Smith Code of Ordinances:

<b>NAME</b>	<b>ADDRESS OF PROPERTY CLEANED</b>	<b>AMOUNT OF LIEN</b>	<b>LIEN + 10% PENALTY</b>
4 Diamonds Enterprises, LLC	2119 North 13	\$273.42	\$300.76
616 North 19th LLC	616 North 19	\$258.95	\$284.85
616 North 19th LLC	616 North 19	\$243.24	\$267.56
Al Sher Inc.	1719 North 13	\$221.52	\$243.67
Ames, Thomas Dewayne	3400 Johnson	\$203.74	\$224.11
Ames, Thomas Dewayne	3400 Johnson	\$207.74	\$228.51
Ames, Thomas Dewayne	3400 Johnson	\$225.24	\$247.76
Arkansas District Council of Assemblies	3023 North	\$434.66	\$478.13
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$274.08	\$301.49
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$400.43	\$440.47
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$561.24	\$617.36
AR-NM-1203-030 LLC	1805 South Vicksburg	\$276.52	\$304.17
AR-NM-1203-030 LLC	1805 South Vicksburg	\$255.71	\$281.28
Austin, Mike	706 South 22	\$258.62	\$284.48
Avanya, Eric	1604 South "W"	\$229.24	\$252.16
Avanya, Eric	1604 South "W"	\$225.24	\$247.76
AVS Properties	1424 South 12, lot north of	\$304.67	\$335.14
AVS Properties	1424 South 12, lot north of	\$241.99	\$266.19
AVS Properties	1924 Birnie	\$278.24	\$306.06
AVS Properties	1924 Birnie	\$221.74	\$243.91
AVS Properties	2023 North 12	\$276.24	\$303.86

AVS Properties	2023 North 12	\$254.74	\$280.21
AVS Properties	2023 North 12	\$223.24	\$245.56
AVS Properties	2023 North 12	\$241.25	\$265.38
AVS Properties	2023 North 12	\$237.24	\$260.96
AVS Properties	2109 Wirsing	\$233.24	\$256.56
AVS Properties	2109 Wirsing	\$237.24	\$260.96
AVS Properties	2109 Wirsing	\$445.66	\$490.23
AVS Properties	2109 Wirsing	\$250.74	\$275.81
AVS Properties	3101 Russell	\$328.74	\$361.61
AVS Properties	3101 Russell	\$427.89	\$470.68
AVS Properties	3401 Eller, lot west of	\$231.24	\$254.36
AVS Properties	3401 Eller, lot west of	\$261.49	\$287.64
Bandy, Hilde	914 North 6, 2nd lot north of	\$235.24	\$258.76
Bandy, Hilde	914 North 6, 2nd lot north of	\$231.24	\$254.36
Bandy, Hilde	914 North 6, 2nd lot north of	\$261.59	\$287.75
Barker, Oliver & Alma	1921 North 8	\$371.21	\$408.33
Barker, Oliver & Alma	1921 North 8	\$248.49	\$273.34
Barker, Oliver & Alma	1921 North 8	\$330.75	\$363.83
Beckwith, Richard	1121 North 9	\$192.02	\$211.22
Beckwith, Richard	1121 North 9	\$200.77	\$220.85
Beckwith, Richard	1121 North 9	\$204.77	\$225.25
Beckwith, Richard	1121 North 9	\$235.02	\$258.52
Beckwith, Richard	1806 North "M", lot west of	\$209.74	\$230.71
Bennett Properties LLLP	5300 Wilson	\$226.49	\$249.14
Bollman, Wayne E.	2201 North 28	\$244.74	\$269.21
Bollman, Wayne E.	2201 North 28	\$213.74	\$235.11
Bollman, Wayne E.	2201 North 28	\$231.24	\$254.36
Bollman, Wayne E.	2201 North 28	\$217.74	\$239.51
Bollman, Wayne E.	2201 North 28	\$239.61	\$263.57
Bottoms, David & Dena	9708 Croxted	\$247.84	\$272.62
Brannon, Floyd K. & Mildred L.	1410 North 5	\$356.24	\$391.86
Brannon, Floyd K. & Mildred L.	1410 North 5	\$260.74	\$286.81
Brannon, Floyd K. & Mildred L.	1410 North 5	\$260.74	\$286.81
Brannon, Floyd K. & Mildred L.	1410 North 5	\$282.24	\$310.46
Brannon, Floyd K. & Mildred L.	1410 North 5	\$260.74	\$286.81
Brant, Frank W.	2143 Churchill	\$297.99	\$327.79
Brant, Frank W.	3406 Northview	\$266.74	\$293.41
Brant, Frank W.	917 South 22	\$249.92	\$274.91
Bray, James & Garland	4908 Armour	\$239.24	\$263.16
Bridges, Richard C.	600 North 13	\$265.84	\$292.42
Bridges, Richard C.	600 North 13	\$219.83	\$241.81
Brown, Alice F.	918 North 8, lot north of	\$204.99	\$225.49

Brown, Pauline	915 South 10	\$271.95	\$299.15
Burger, Gary	721 North "S"	\$354.84	\$390.32
Buxton, Nathan & Barbara Ann	1001 Harvard	\$237.02	\$260.72
Buxton, Nathan & Barbara Ann	1001 Harvard	\$241.02	\$265.12
Cameron, Regina D. & Kenneth Lee	1001 North 18	\$341.41	\$375.55
Cameron, Regina D. & Kenneth Lee	1001 North 18	\$254.56	\$280.02
Cameron, Regina D. & Kenneth Lee	1001 North 18	\$233.06	\$256.37
Cameron, Regina D. & Kenneth Lee	1001 North 18	\$355.24	\$390.76
Carney, Cecil	3212 Emrich	\$795.24	\$874.76
Carney, Cecil	3212 Emrich	\$278.24	\$306.06
Carney, Cecil	3212 Emrich	\$243.24	\$267.56
Carney, Cecil	3212 Emrich	\$251.24	\$276.36
Carney, Cecil	3212 Emrich	\$251.24	\$276.36
Carney, Cecil	3212 Emrich	\$357.67	\$393.44
Carter, Chad A.	901 North 46	\$330.42	\$363.46
Carter, Chad A.	901 North 46	\$276.49	\$304.14
Carter, Oleta & Hershell Lishbrook	2405 North 30	\$211.74	\$232.91
Carter, Oleta & Hershell Lishbrook	2405 North 30	\$238.67	\$262.54
Carter, Oleta & Hershell Lishbrook	2405 North 30	\$198.24	\$218.06
Carter, Oleta & Hershell Lishbrook	2405 North 30	\$229.24	\$252.16
Castro, Fermin & Lidia	615 South 20	\$205.71	\$226.28
Chandakham, Aire H.	2205 North 30, lot north of	\$202.99	\$223.29
Chandakham, Aire H.	2205 North 30, lot north of	\$354.89	\$390.38
Chandakham, Aire H.	2205 North 30, lot north of	\$395.24	\$434.76
Chandakham, Aire H.	2205 North 30, lot north of	\$211.74	\$232.91
Chanthorn, Koonkeo & Minivan	4612 Mussett	\$444.94	\$489.43
Christiana Bank & Trust	2116 North 30	\$243.24	\$267.56
Christiana Bank & Trust	2116 North 30	\$221.74	\$243.91
Christiana Bank & Trust	2116 North 30	\$239.24	\$263.16
Christiana Bank & Trust	2116 North 30	\$225.74	\$248.31
Christiana Bank & Trust	2116 North 30	\$260.74	\$286.81
Coley, Pamela J. & Douglas A.	1817 Waco	\$278.96	\$306.86
Coley, Pamela J. & Douglas A.	1817 Waco	\$339.77	\$373.75
Collins, Vern	716 North "R"	\$415.55	\$457.11
Conley, Joseph B.	4017 Brockman	\$335.45	\$369.00
Cook, Keith C.	2318 North 29	\$415.79	\$457.37
Cook, Keith C.	2318 North 29	\$263.71	\$290.08
Cook, Keith C.	2318 North 29	\$206.99	\$227.69
Coons, Richard K.	816 North 3, 2nd lot south of	\$301.24	\$331.36
Coons, Richard K.	816 North 3, 2nd lot south of	\$231.24	\$254.36
Craft, Amy	414 North 36	\$276.06	\$303.67
Crossno, Mary C. & Bobby Gene	1810 South "J"	\$319.36	\$351.30

Cunneen, Casey M.	2209 South "S"	\$202.99	\$223.29
Davidson, Shon	North 6 & North "Q", lot NE corner of	\$289.74	\$318.71
Davidson, Shon	North 6 & North "Q", lot NE corner of	\$263.49	\$289.84
Davidson, Shon	North 6 & North "Q", lot NE corner of	\$233.24	\$256.56
Davidson, Shon	North 6 & North "Q", lot NE corner of	\$272.24	\$299.46
Didion, Eugene J.	6001 Cliff Drive	\$366.55	\$403.21
Dixon Rentals No. 1 LLC	2314 Pryor	\$258.56	\$284.42
Dixon Rentals No. 1 LLC	2314 Pryor	\$374.67	\$412.14
Dowdy, James Jr. & Angela	1906 South "N"	\$240.74	\$264.81
Dowdy, James Jr. & Angela	1906 South "N"	\$236.74	\$260.41
Drake, Harold S.	1000 North 11	\$209.74	\$230.71
Drake, Harold S.	1000 North 11	\$192.24	\$211.46
Drake, Harold S.	1000 North 11	\$196.24	\$215.86
Drake, Harold S.	1000 North 11	\$196.24	\$215.86
Drake, Harold S.	1000 North 11	\$196.24	\$215.86
Edwards, Gregory J., Chris W. & Joe	6206 Highway 271	\$1,069.48	\$1,176.43
Edwards, Gregory J., Chris W. & Joe	6206 Highway 271	\$225.24	\$247.76
Edwards, Gregory J., Chris W. & Joe	6206 Highway 271	\$229.24	\$252.16
Edwards, Gregory J., Chris W. & Joe	6206 Highway 271	\$133.67	\$147.04
Edwards, Gregory J., Chris W. & Joe	6213 South 11	\$74.00	\$81.40
Edwards, Gregory J., Chris W. & Joe	6213 South 11	\$186.24	\$204.86
Edwards, Gregory J., Chris W. & Joe	6213 South 11	\$225.24	\$247.76
Edwards, Gregory J., Chris W. & Joe	6213 South 11	\$221.24	\$243.36
Edwards, Gregory J., Chris W. & Joe	6215 South 11	\$74.00	\$81.40
Edwards, Gregory J., Chris W. & Joe	6215 South 11	\$186.24	\$204.86
Edwards, Gregory J., Chris W. & Joe	6215 South 11	\$229.24	\$252.16
Edwards, Gregory J., Chris W. & Joe	6215 South 11	\$203.84	\$224.22
Edwards, Gregory J., Chris W. & Joe	6215 South 11	\$221.24	\$243.36
Edwards, Gregory J., Chris W. & Joe	South 11 & Creston, lot SE corner of	\$1,458.46	\$1,604.31
Edwards, Gregory J., Chris W. & Joe	South 11 & Creston, lot SE corner of	\$233.24	\$256.56
Edwards, Gregory J., Chris W. & Joe	South 11 & Creston, lot SE corner of	\$252.49	\$277.74
Evans, Elmo	North Short 7 & North "Q", SE corner of	\$252.74	\$278.01
Evans, Elmo	North Short 7 & North "Q", SE corner of	\$247.99	\$272.79
Evans, Randy L. & Cathy	702 North 18	\$214.74	\$236.21
Evans, Randy L. & Cathy	702 North 18	\$227.49	\$250.24
Farmer, Charles	1444 North 21	\$411.89	\$453.08
Farmer, Charles	1444 North 21	\$337.24	\$370.96
Fernandez, Gabriel	1316 North 8	\$93.27	\$102.60
Fernandez, Gabriel	1316 North 8	\$106.77	\$117.45
Fernandez, Gabriel	1316 North 8	\$86.22	\$94.84
Fields, William C. & Jimmie D.	3619 Ridgeway	\$267.71	\$294.48
Foster, Phillip & Margie	3920 High	\$373.26	\$410.59

Fraternal Order of Eagles # 4416	1416 North 5	\$237.24	\$260.96
Fraternal Order of Eagles # 4416	1416 North 5	\$215.74	\$237.31
Fraternal Order of Eagles # 4416	1416 North 5	\$237.24	\$260.96
Gallagher, Charles & Nancy	2405 North 31	\$539.52	\$593.47
Ghering, Aaron & Misty Kapitza	3 Old Greenwood	\$312.99	\$344.29
Gilbert, Lucindy	2101 North 8	\$216.36	\$238.00
Gilbert, Lucindy	2101 North 8	\$255.34	\$280.87
Gilbert, Lucindy	2101 North 8	\$202.86	\$223.15
Glosenger, Mark E.	800 Belle	\$330.67	\$363.74
Glosenger, Mark E.	800 Belle	\$217.74	\$239.51
Glosenger, Mark E.	800 Belle	\$239.24	\$263.16
Glosenger, Mark E.	800 Belle	\$208.24	\$229.06
Gonzales, Herman	3211 North 28	\$99.92	\$109.91
Greene, Latasha & Nicholas	511 North 32	\$334.45	\$367.90
Greene, Latasha & Nicholas	511 North 32	\$245.49	\$270.04
Greenfield, Stacy	1304 Bluff	\$251.74	\$276.91
Guzman, Juana	1916 South "O"	\$283.10	\$311.41
Guzman, Juana	1916 South "O"	\$248.10	\$272.91
Guzman, Juana	1916 South "O"	\$252.10	\$277.31
Habalow, Kai Rippy	609-611 South 17	\$229.24	\$252.16
Habalow, Kai Rippy	609-611 South 17	\$3,547.08	\$3,901.79
Hamilton, Brandon R.	1520 Boston	\$406.49	\$447.14
Hamilton, Brandon R.	1520 Boston	\$285.56	\$314.12
Hamilton, Brandon R.	1520 Boston	\$328.56	\$361.42
Hamilton, Brandon R.	1520 Boston	\$328.56	\$361.42
Hartness, Jimmy	1619 South "Q"	\$305.61	\$336.17
Harwood, Ashley James	1900 North 6, lot north of	\$217.74	\$239.51
Harwood, Ashley James	1900 North 6, lot north of	\$221.74	\$243.91
Harwood, Ashley James	1900 North 6, lot north of	\$235.24	\$258.76
Hasco Development Company Inc.	2212 North 31	\$324.74	\$357.21
Herring, Alan	1437 North 36	\$522.27	\$574.50
Hesson, Michael	3219 South 39	\$269.99	\$296.99
Hickey, Dorothy	3228 Neis	\$227.24	\$249.96
Hickey, Dorothy	3228 Neis	\$209.24	\$230.16
Hickey, Dorothy	3228 Neis	\$209.74	\$230.71
Hickey, Dorothy	3228 Neis	\$213.74	\$235.11
Hines, Brenda	3305 Caitlin Court	\$263.59	\$289.95
Holland, Trista	1301 North 39	\$400.96	\$441.06
Holland, Trista	1301 North 39	\$229.49	\$252.44
Holland, Trista	1301 North 39	\$250.99	\$276.09
Holliman, Tony	4022 Chaffee Drive	\$245.25	\$269.78
Holloway, Albert R.	1707 South "U"	\$194.24	\$213.66

Holy Grounds Investments LLC	501 North 12	\$287.09	\$315.80
Honey, Terry F. & Nedra L. Patterson	1810 South "T"	\$241.02	\$265.12
Honey, Terry F. & Nedra L. Patterson	1810 South "T"	\$207.52	\$228.27
Honey, Terry F. & Nedra L. Patterson	1810 South "T"	\$233.02	\$256.32
Hudson, Barney B.	717 North 34	\$219.49	\$241.44
Hurshuajer, Mengkou	1901 Wirsing	\$236.49	\$260.14
Hutchins, Esther	2900 North "J"	\$201.93	\$222.12
J & J Investments	2908-2910 Tilles	\$277.59	\$305.35
James, Ora R. & Edward	2002 North 14	\$301.24	\$331.36
James, Ora R. & Edward	2002 North 14	\$196.24	\$215.86
James, Ora R. & Edward	2002 North 14	\$200.24	\$220.26
Johnson, Doris	1505 North 38	\$1,904.99	\$2,095.49
Johnson, Jarrad D.	1104 North 41	\$227.49	\$250.24
Johnson, Jarrad D.	1104 North 41	\$172.00	\$189.20
Johnson, Jeffrey Allen	3515-3517 Barry	\$279.99	\$307.99
Jones, Wesley & Panyda Prasith	2122 South "S"	\$283.05	\$311.36
Joseph, Lydia J.	3300 Iola	\$233.93	\$257.32
Kamal U Properties	1311 North 14	\$268.24	\$295.06
Kamal U Properties	1311 North 14	\$211.74	\$232.91
Kamal U Properties	1817 North 14, lot south of	\$292.50	\$321.75
Kamal U Properties	2213 North "R"	\$282.24	\$310.46
Keeling, Amy N.	4215 Brockman	\$246.99	\$271.69
Keeling, Amy N.	4215 Brockman	\$465.41	\$511.95
Kennedy, Rebekah J.	1705 South "M"	\$216.74	\$238.41
Kirkham, Rose	3308 Irving	\$227.49	\$250.24
Kirkham, Rose	3308 Irving	\$382.27	\$420.50
Kouri, Buddy Gene	512 South 12	\$276.24	\$303.86
Kouri, Buddy Gene	512 South 12	\$276.89	\$304.58
Kouri, Buddy Gene	518 South 12	\$368.84	\$405.72
Kouri, Buddy Gene	518 South 12	\$192.04	\$211.24
Kymer, Richard M.	3629 Macarthur	\$558.99	\$614.89
Lee, Matthew T.	2109 Birnie	\$192.24	\$211.46
Lee, Matthew T.	2109 Birnie	\$227.24	\$249.96
Lee, Matthew T.	2109 Birnie	\$196.24	\$215.86
Lowery, Claudye	3008 Russell	\$233.24	\$256.56
Lowery, Claudye	3008 Russell	\$211.74	\$232.91
Lowery, Claudye	3008 Russell	\$301.67	\$331.84
Lowrey, Jimmie	1023 South 22	\$260.24	\$286.26
Lowrey, Jimmie	1023 South 22	\$229.24	\$252.16
Lowrey, Jimmie	1023 South 22	\$281.09	\$309.20
Lowrey, Jimmie	1023 South 22	\$229.24	\$252.16
Lowrey, Jimmie	3226 Neis	\$227.24	\$249.96

Lowrey, Jimmie	3226 Neis	\$205.74	\$226.31
Lowrey, Jimmie	3226 Neis	\$209.74	\$230.71
Lowrey, Jimmie	3226 Neis	\$213.74	\$235.11
Lowrey, Jimmie	619 North 36	\$277.99	\$305.79
Lyons Living Trust	5200 South 32	\$237.89	\$261.68
Markham, Alfred L. III	2823 Tilles	\$269.50	\$296.45
Martin, Holly	1111 North 41	\$198.99	\$218.89
Martin, Linda C.	1515 South "S"	\$373.95	\$411.35
Martin, Linda C.	1515 South "S"	\$307.34	\$338.07
Martin, Linda C.	1515 South "S"	\$237.61	\$261.37
Martin, Wesley or Nikki	1918 South "P"	\$237.24	\$260.96
Martin, Wesley or Nikki	1918 South "P"	\$346.94	\$381.63
Martin, Wesley or Nikki	1918 South "P"	\$233.24	\$256.56
Martland, Marjorie	1923 North "J"	\$333.58	\$366.94
Martland, Marjorie	1923 North "J"	\$297.74	\$327.51
Martland, Marjorie	1923 North "J"	\$380.02	\$418.02
Maxwell, Don Jr.	7801 Bartsch	\$410.13	\$451.14
McCleskey, Eric & Barbara	4515 Spradling	\$499.01	\$548.91
McCormick, James & David Pickle	2717 Dodson	\$872.42	\$959.66
McCormick, James & David Pickle	2717 Dodson	\$287.10	\$315.81
McCormick, James & David Pickle	2717 Dodson	\$273.60	\$300.96
McCullough, Wesley	7816 Texas Road	\$191.58	\$210.74
McKinney, Nathan D.	1614 Lexington	\$245.99	\$270.59
Mcluckie Trust, Donald A.	508-512 North 5	\$294.30	\$323.73
Miller, Dusti	1601-1603 South 25	\$269.70	\$296.67
Miller, Dusti	1601-1603 South 25	\$221.85	\$244.04
Miller, Vernon	1428 North 35	\$292.99	\$322.29
Miller's Creek Inc.	5503 Spradling, lot east of	\$248.49	\$273.34
Miller's Creek Inc.	5503 Spradling, lot east of	\$234.99	\$258.49
Mills, Roy C. & Judy G.	8512 Southridge Drive	\$216.75	\$238.43
Mize, Jody E. & Carrie J.	3124 South 32	\$226.92	\$249.61
Moore, Cynthia	2921 North Albert Pike	\$417.42	\$459.16
Moore, Cynthia	2921 North Albert Pike	\$259.24	\$285.16
Moore, Cynthia	2921 North Albert Pike	\$242.49	\$266.74
Moore, James & Irma G.	1114 South 9	\$249.77	\$274.75
Moore, James & Irma G.	1114 South 9	\$201.27	\$221.40
Moore, James & Irma G.	1114 South 9	\$258.52	\$284.37
Moore, James & Irma G.	1114 South 9	\$670.24	\$737.26
Moore, James & Irma G.	1114 South 9	\$249.02	\$273.92
Moore, James & Irma G.	1114 South 9	\$284.02	\$312.42
Moore, James & Irma G.	1114 South 9	\$237.02	\$260.72
Moore, Larry Don	540 North 35	\$255.75	\$281.33

Morrison Bluff LLC	2501 South "R"	\$393.59	\$432.95
Mortgage Electronic Registration System	3622 Macarthur	\$233.17	\$256.49
Mumey, John Frasier	405 South 14	\$251.02	\$276.12
Mumey, John Frasier	405 South 14	\$255.02	\$280.52
Mumey, John Frasier	405 South 14	\$229.52	\$252.47
Mumey, John Frasier	405 South 14	\$229.52	\$252.47
Navarette, Francisco A.	3012 Virginia	\$266.64	\$293.30
Neal, Jessica A. / Lereta Tax Services	1207 Brazil	\$1,107.95	\$1,218.75
Neal, Jessica A. / Lereta Tax Services	1207 Brazil	\$312.56	\$343.82
Neal, Jessica A. / Lereta Tax Services	1207 Brazil	\$390.03	\$429.03
Nguyen, Truong T.	604 North 18	\$350.70	\$385.77
Nguyen, Truong T.	604 North 18	\$205.99	\$226.59
Nguyen, Truong T.	604 North 18	\$201.99	\$222.19
Nguyen, Truong T.	604 North 18	\$227.49	\$250.24
Nichols, Tammy	7924 Texas Road	\$349.12	\$384.03
Nichols, Tammy	7924 Texas Road	\$254.74	\$280.21
ODGO-WU Ozara Investments	2012 North Short 15	\$297.24	\$326.96
ODGO-WU Ozara Investments	2012 North Short 15	\$209.74	\$230.71
ODGO-WU Ozara Investments	2012 North Short 15	\$209.74	\$230.71
ODGO-WU Ozara Investments	2012 North Short 15	\$192.24	\$211.46
ODGO-WU Ozara Investments	2909 North "I"	\$268.24	\$295.06
ODGO-WU Ozara Investments	2909 North "I"	\$233.24	\$256.56
ODGO-WU Ozara Investments	4710 Mussett	\$221.74	\$243.91
ODGO-WU Ozara Investments	4710 Mussett	\$255.92	\$281.51
ODGO-WU Ozara Investments	920 North 5	\$314.67	\$346.14
ODGO-WU Ozara Investments	920 North 5	\$231.24	\$254.36
ODGO-WU Ozara Investments	920 North 5	\$239.24	\$263.16
ODGO-WU Ozara Investments	920 North 5	\$235.24	\$258.76
Ozark Funding Group LLC	3412 Holyoke	\$259.71	\$285.68
Palmer, Timothy Allen	2107 North 30, lot north of	\$247.74	\$272.51
Patterson, Wesley & Charlotte	3712 Spradling	\$401.42	\$441.56
Payton, Cecil R.	North 20 & Birnie, 2nd lot SW corner of	\$274.24	\$301.66
Payton, Cecil R.	North 20 & Birnie, 2nd lot SW corner of	\$226.49	\$249.14
Peck, Craig W.	1901 South 71	\$240.61	\$264.67
Perry, Michael Carlton	900 North 12	\$6,064.75	\$6,671.23
Phillips, Bleeker J.	705 North "N", lot west of	\$210.74	\$231.81
Phillips, Bleeker J.	705 North "N", lot west of	\$201.99	\$222.19
Phillips, Bleeker J.	705 North "N", lot west of	\$197.99	\$217.79
Phillips, Bleeker J.	705 North "N", lot west of	\$232.99	\$256.29
Plumlee, C D & Wife	3919 Birnie	\$231.74	\$254.91
Plumlee, C D & Wife	3919 Birnie	\$249.24	\$274.16
Plumlee, C D & Wife	3919 Birnie	\$245.24	\$269.76

Pogue, Jeanette	801 North 36	\$424.51	\$466.96
Poole, Alfred & Thelma	2308 North 27	\$319.17	\$351.09
Prescott, Sandra	308 North 18	\$247.24	\$271.96
Price, Larry Eugene & Ardine	3600 Willow	\$278.21	\$306.03
Price, Larry Eugene & Ardine	3600 Willow	\$250.99	\$276.09
Price, Larry Eugene & Ardine	3600 Willow	\$452.15	\$497.37
Price, Larry Eugene & Ardine	3600 Willow	\$324.99	\$357.49
Rainwater, Gale	1723 South "W"	\$647.24	\$711.96
Ramsey, Sarah J.	1458 North 35	\$341.32	\$375.45
Rattero, Hernan	409 North 19	\$543.20	\$597.52
Redding, Brad & Vanessa	1214 North 44	\$197.99	\$217.79
Reese, Darrell L. & Yvonne K.	400 North "M", lot behind	\$537.26	\$590.99
Reinschmiedt, Phillip	1020 North 46	\$207.74	\$228.51
Reinschmiedt, Phillip	1020 North 46	\$198.99	\$218.89
Reinschmiedt, Phillip	1020 North 46	\$215.74	\$237.31
Rice, Phillip Q. & Pamela S.	3900 Park	\$274.49	\$301.94
Rivera, Michael	2030 North 14	\$226.49	\$249.14
Rivera, Michael	2030 North 14	\$196.24	\$215.86
Roberts, Roy C. & Altha L.	North 9 & North "G", NE corner of	\$219.24	\$241.16
Roberts, Roy C. & Altha L.	North 9 & North "G", NE corner of	\$223.74	\$246.11
Roberts, Roy C. & Altha L.	North 9 & North "G", NE corner of	\$206.24	\$226.86
Roberts, Roy C. & Altha L.	North 9 & North "G", NE corner of	\$241.24	\$265.36
Rodriquez, Lucy or Mario Perez	2915 North "L", lot east of	\$233.24	\$256.56
Rush, Virginia E.	1328 Bluff	\$344.45	\$378.90
Rush, Virginia E.	1328 Bluff	\$343.17	\$377.49
Sammons, Johnathan K.	709 North 35	\$309.32	\$340.25
Sandpiper Assets LLC	2144 North 13	\$83.67	\$92.04
Sandpiper Assets LLC	2144 North 13	\$109.94	\$120.93
Savathvongxay, Fonh & Souksavath	305 North 53	\$272.74	\$300.01
Schuman F. - R. Kaye Company	816 North 3, 1st lot south of	\$291.74	\$320.91
Sequoyah Energy IBC Inc.	622 North 17	\$266.74	\$293.41
Sequoyah Energy IBC Inc.	622 North 17	\$231.74	\$254.91
Sexton, Julie Karen ET AL	1901 South "Y"	\$268.24	\$295.06
Sexton, Julie Karen ET AL	1901 South "Y"	\$272.24	\$299.46
Sexton, Julie Karen ET AL	1901 South "Y"	\$237.24	\$260.96
Sharp Body Shop Trust	1418 Phoenix, lot behind	\$285.24	\$313.76
Sharp Body Shop Trust	1418 Phoenix, lot behind	\$285.24	\$313.76
Sharp Body Shop Trust	1418 Phoenix, lot behind	\$285.24	\$313.76
Sharp Body Shop Trust	1426 Phoenix	\$3,481.00	\$3,829.10
Sharp Body Shop Trust	1500 Phoenix, lot west of	\$285.24	\$313.76
Sharp Body Shop Trust	1426 Phoenix	\$285.24	\$313.76
Shipman, Leon J. & Susan D.	4601 South 24	\$375.48	\$413.03

Shipman, Leon J. & Susan D.	4601 South 24	\$242.56	\$266.82
Shipman, Leon J. & Susan D.	4601 South 24	\$247.31	\$272.04
Shipman, Leon J. & Susan D.	4601 South 24	\$251.31	\$276.44
Shipman, Leon J. & Susan D.	4601 South 24	\$179.61	\$197.57
Shook, Michael A.	3420 Kelley Highway	\$480.95	\$529.05
Shook, Michael A.	3420 Kelley Highway	\$239.24	\$263.16
Shook, Michael A.	3420 Kelley Highway	\$217.74	\$239.51
Sirotko, Linda S.	2016 North 12	\$310.59	\$341.65
Skulman, Robert & Shirley Wade	606 North 12	\$250.99	\$276.09
Skulman, Robert & Shirley Wade	606 North 12	\$229.49	\$252.44
Skulman, Robert & Shirley Wade	606 North 12	\$814.49	\$895.94
Skulman, Robert & Shirley Wade	914 North 6, 1st lot north of	\$201.99	\$222.19
Skulman, Robert & Shirley Wade	914 North 6, 1st lot north of	\$205.99	\$226.59
Skulman, Robert & Shirley Wade	914 North 6, 1st lot north of	\$300.66	\$330.73
Skulman, Shirley Wade	1101 North 12	\$318.84	\$350.72
Skulman, Shirley Wade	1101 North 12	\$262.99	\$289.29
Skulman, Shirley Wade	1101 North 12	\$280.49	\$308.54
Skulman, Shirley Wade	1101 North 12	\$249.49	\$274.44
Skulman, Shirley Wade	1208 North 7	\$253.02	\$278.32
Skulman, Shirley Wade	1208 North 7	\$223.52	\$245.87
Skulman, Shirley Wade	1208 North 7	\$219.52	\$241.47
Skulman, Shirley Wade	1208 North 7	\$241.02	\$265.12
Skulman, Shirley Wade	1208 North 7	\$227.52	\$250.27
Skulman, Shirley Wade	1301 North 5	\$266.74	\$293.41
Skulman, Shirley Wade	1301 North 5	\$288.24	\$317.06
Skulman, Shirley Wade	1301 North 5	\$288.24	\$317.06
Skulman, Shirley Wade	1301 North 5	\$284.24	\$312.66
Smith, Clarence U.	North "P" & May Ave, lot SW corner of	\$272.71	\$299.98
Smith, Steve	3112 North 27	\$293.74	\$323.11
Smith, Steve	3112 North 27	\$245.24	\$269.76
Smith, Steve	3112 North 27	\$237.24	\$260.96
Smith, Steve	3112 North 27	\$241.24	\$265.36
Smith, Steve	3112 North 27	\$254.74	\$280.21
Spence, Willie & Shirley	2209 Birnie	\$471.03	\$518.13
Starling, Geneva M.	3024 Blair, lot south of	\$295.52	\$325.07
Starling, Geneva M.	3024 Blair, lot south of	\$221.52	\$243.67
Starling, Geneva M.	3024 Blair, lot south of	\$216.77	\$238.45
Stewart, Phillip A. & Janice	3222 Blair	\$231.52	\$254.67
Stewart, Phillip A. & Janice	3222 Blair	\$249.02	\$273.92
Stewart, Phillip A. & Janice	3222 Blair	\$249.02	\$273.92
Stewart, Phillip A. & Janice	3222 Blair	\$249.02	\$273.92
Stewart, Phillip A. & Janice	3222 Blair	\$292.99	\$322.29

Straughter, William E.	3316 Irving	\$215.52	\$237.07
Straughter, William E.	3316 Irving	\$237.02	\$260.72
Straughter, William E.	3316 Irving	\$211.52	\$232.67
Straughter, William E.	3316 Irving	\$211.52	\$232.67
Sturgeon, Stephanie	1451 North 40	\$326.21	\$358.83
Sturgeon, Stephanie	1451 North 40	\$251.24	\$276.36
Sturgeon, Stephanie	1451 North 40	\$229.74	\$252.71
Sullivan, Nathan	3501 North 27	\$326.99	\$359.69
Sullivan, Nathan	3501 North 27	\$403.50	\$443.85
Sullivan, Nathan	3501 North 27	\$227.49	\$250.24
Sullivan, Nathan	3501 North 27	\$248.99	\$273.89
Sullivan, Nathan	3501 North 27	\$342.70	\$376.97
Suttles, Dustin	1305 North 46	\$159.99	\$175.99
Swearingen, Patricia M. & William J.	2209 South "T"	\$331.81	\$364.99
SYB Inc.	Jenny Lind & South "Z", NW corner of	\$242.52	\$266.77
Taft, Charles & Kendard E.	811 North "F"	\$289.02	\$317.92
Taft, Charles & Kendard E.	811 North "F"	\$255.02	\$280.52
Taft, Charles & Kendard E.	811 North "F"	\$255.02	\$280.52
Taft, Charles & Kendard E.	811 North "F"	\$300.41	\$330.45
Tanner, Minnie	2145 North 30	\$225.49	\$248.04
Taylor, Roberta	2310 North 31	\$290.24	\$319.26
Treadway Family, Hobart W. & Norma C.	312-314 North Albert Pike	\$206.24	\$226.86
Triplett, Shirley	1728 North 8	\$249.83	\$274.81
Tucker, Darren D.	2106 North "K"	\$297.92	\$327.71
Turner, Christopher R.	3815 Morris	\$764.99	\$841.49
Tweed Investments	604 North 8	\$8,503.16	\$9,353.48
US Bank N.A.	1809 North "L"	\$210.22	\$231.24
US Bank N.A.	1809 North "L"	\$206.02	\$226.62
Valley, Pablo A.	1805 North "I"	\$221.74	\$243.91
Veach, Melisa J.	3409 Kendall	\$246.99	\$271.69
Walton, Angela	1904 North 13	\$239.02	\$262.92
Walton, Angela	1904 North 13	\$278.02	\$305.82
Walton, Pauline	1305 North "R"	\$484.20	\$532.62
Washington Mutal Bank F.A.	3623 Ridgeway	\$348.69	\$383.56
Webb, William & Elma	4237 Wirsing	\$100.04	\$110.04
Weindel, John L. c/o Mitchell Weindel	423 North 7	\$571.18	\$628.30
Weindel, John L. c/o Mitchell Weindel	423 North 7	\$268.56	\$295.42
Weindel, John L. c/o Mitchell Weindel	423 North 7	\$262.56	\$288.82
Weindel, John L. c/o Mitchell Weindel	423 North 7	\$288.06	\$316.87
Weindel, John L. c/o Mitchell Weindel	423 North 7	\$457.25	\$502.98
West, Linda	3925 High	\$326.87	\$359.56
West, Linda	3925 High	\$242.99	\$267.29

Westbrook, Rena L. & David L. Dunagin	103 North 16	\$265.02	\$291.52
Westbrook, Rena L. & David L. Dunagin	103 North 16	\$261.02	\$287.12
Westbrook, Rena L. & David L. Dunagin	103 North 16	\$239.52	\$263.47
Westbrook, Rena L. & David L. Dunagin	103 North 16	\$278.52	\$306.37
Westbrook, Rena L. & David L. Dunagin	103 North 16	\$785.79	\$864.37
Whiteley, Joseph S.	1507 South 17	\$438.67	\$482.54
Whiteley, Joseph S.	1507 South 17	\$297.99	\$327.79
Woodruff, Sarah M.	8625 Southridge	\$316.99	\$348.69
Woodruff, Sarah M.	8625 Southridge	\$242.99	\$267.29
Woodruff, Sarah M.	8625 Southridge	\$329.96	\$362.96
Woodruff, Sarah M.	8625 Southridge	\$242.99	\$267.29
Wornkey, Sandra Et al	1700 South 11	\$233.02	\$256.32
		\$148,953.52	\$163,848.87

**SECTION 2:** The provisions of this ordinance are hereby declared to be severable to the extent that a decision by any court of competent jurisdiction determining that any portion of this ordinance or any application thereof is unconstitutional, invalid or otherwise illegal shall not affect the constitutionality, validity or legality of the other provisions and/or applications of the ordinance.

**PASSED AND APPROVED** this 19th day of November, 2013.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

Approved as to form:



\_\_\_\_\_  
Publish one time

# MEMORANDUM

November 15, 2013

**TO:** Ray Gosack, City Administrator  
**FROM:** Sherri Gard, City Clerk  
**RE:** Certification of Delinquent Property Cleanup Liens

The attached ordinance certifies to the Sebastian County Tax Collector a total of \$163,848.87 in delinquent property cleanup liens associated with those properties abated or structures demolished by the City of Fort Smith. Each lien includes a 10% penalty. There are 453 delinquent liens included within the ordinance involving 189 property owners and 212 properties. There were 434 delinquent liens certified to the county in 2012 totaling \$166,109.92.

## **PROPERTY OWNERS APPEAL BOARD HEARINGS**

Hearings before the appeal board were held on September 25<sup>th</sup> and 26<sup>th</sup> in the Bartlett Community Room at the Fort Smith Police Department. Notification of the hearings was by certified mail and publication in the Times Record. Eight (8) property owners attended the hearings and the draft minutes are attached.

## **NOVEMBER 19<sup>th</sup> BOARD OF DIRECTORS MEETING**

As required by law, notice of the public hearing was provided to the property owners by certified mail and publication in the Times Record four (4) consecutive weeks prior to the meeting. As of this date, two (2) property owners have indicated they will be in attendance. Neighborhood Services staff and several members of the Property Owners Appeal Board will also be present to answer any questions.

Upon approval of the ordinance, a copy will be forwarded to the tax collector, and the liens will be placed on the tax records for the year 2013 (for collection in 2014).

In the event any lien has been paid in full, the motion for approval should include a provision to allow the removal of said lien(s) from the ordinance prior to formal submission to the Sebastian County Tax Collector.

If you or members of the Board have any questions prior to the meeting, please let me know.

## **MINUTES OF PROPERTY OWNERS APPEAL BOARD HEARINGS**

**SEPTEMBER 25, 2013 AND SEPTEMBER 26, 2013 ~ 6:00 P.M.**

### **FORT SMITH POLICE DEPARTMENT ~ BARTLETT COMMUNITY ROOM**

The hearings were held to allow delinquent property owners an opportunity to be heard regarding charges by the City for abatement costs and who feel they have been wrongly charged. Notice of the hearings was published in the Times Record on Friday, August 14, 2013. Certified letters dated August 15, 2013 were also mailed to each property owner.

#### **WEDNESDAY ~ SEPTEMBER 25, 2013**

The hearing was called to order by Karen Lewis, Chairperson, with the following members of the Property Owners Appeal Board (POAB) present: Karen Lewis, Scott Monroe, Dolores Chitwood, Megan Raynor and Joel Culberson. A quorum was declared.

City staff in attendance were City Clerk Sherri Gard, Building Official Jimmie Deer, Neighborhood Services Supervisor Rick Ruth, and Inspectors Dean Polk, Randal Hicks, Kelly Hicks and Brandon Haynes.

Chairperson Lewis stated the purpose of the hearings, and then each member of the Appeal Board introduced themselves, advising how long they have been property owners in Fort Smith. She further noted that appeal of any decision made by the Property Owners Appeal Board may be appealed to the Fort Smith Board of Directors at a public hearing to be held at 6:00 p.m., Tuesday, November 19, 2013 at the Fort Smith Public Schools Service Center at 3205 Jenny Lind Road.

The following property owners were present to address the Appeal Board:

- **Joe Edwards**  
**Springdale, Arkansas**

**Property 1: 6206 Highway 271 (4 cleanings)**

**Property 2: 6213 South 11<sup>th</sup> Street (4 cleanings)**

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

**Property 3** 6215 South 11<sup>th</sup> Street (4 cleanings)  
**Property 4:** Lot on southeast corner of South 11<sup>th</sup> & Creston  
Streets (4 cleanings)  
**Owners:** Gregory J., Chris W. & Joe Edwards  
**Cleaned:** April, June, July and October 2012 ~ \$5,223.10

Inspector Kelly Hicks advised the subject properties are adjoining vacant lots and reviewed the property files, presented videos of inspections and provided before and after pictures of each cleaning. The properties were first inspected on March 22, 2012 and posted for overgrowth, dead limbs and trash & debris. The properties were reinspected on April 3, 2012 and a certified letter was forwarded to the property owner and signed by Peggy Edwards. A final inspection was conducted on April 16, 2012 whereby the violations remained; therefore, the properties were assigned to the contractor with abatement accomplished on April 23, 2012.

The subject properties were reinspected every thirty (30) days thereafter whereby each property was found to be in violation on multiple occasions. Such resulted in additional cleanings of each property in June, July and October 2012. The four (4) properties were cleaned a total of four (4) times each; therefore, the City maintains a total of sixteen (16) liens on the subject properties.

Mr. Edwards addressed the POAB advising illegal dumping continually occurs on the properties and alleged he's reported such to the police on multiple occasions. Since he resides in Springdale, an individual was hired to maintain the properties; however, because the neighbor harasses and cusses at the individual upon his arrival to maintain the properties, the individual resigned. Mr. Edwards indicated his desire to maintain the property, but stated, "*I will not fight with the neighbor.*"

Regarding the harassment of employed individuals, Building Official Jimmie Deer urged Mr. Edwards to let Neighborhood Services know when the property will be maintained, and the City will contact the Police Department for assistance.

Because the notice was signed for in April 2012, Ms. Chitwood inquired if Mr. Edwards "*done anything*" to abate the violations whereby Mr. Edwards simply responded "*no*".

Ms. Lewis questioned if the properties have been cleaned by the City in 2013 whereby Inspector Kelly Hicks responded "yes" and Supervisor Rick Ruth added the City continually receives complaints on the subject properties.

**Appeal Board Action ~ 6206 Highway 271, 6213 South 11, 6215 South 11 and Lot on southeast corner of South 11 & Creston**

Chitwood, seconded by Raynor, moved that all liens remain due in full **(\$5,322.10)** and same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members all voting aye, Chairperson Lewis declared the motion carried.

■ **Patricia Copeland  
Fort Smith, Arkansas**

**Property: 4515 Armour Avenue  
Owner: Anna Belle Gordon (deceased)  
Cleaned: September 4, 2012 ~ \$299.89**

Inspector Randal Hicks reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was first inspected on July 23, 2012 and posted for overgrowth and dead limbs. The property was reinspected on August 3, 2012 and a certified letter was forwarded to the property owner; however, such was returned as “*vacant*”. A final inspection was conducted on August 22, 2012 whereby the violations remained; therefore, the property was assigned to the contractor with abatement accomplished on September 4, 2012.

Ms. Copeland addressed the Appeal Board advising the owner, Anna Bell Gordon, is her mother who is now deceased. Because the certified letter was forwarded to the property, which was vacant, she alleged proper notification was not given because she was unaware of the violation. Upon her mother’s passing, Ms. Copeland alleged she updated all mailing addresses to ensure any notice would be forwarded to her; however, after brief discussion, it was determined that Ms. Copeland did not update the mailing address with the Sebastian County Assessor’s Office until after the cleaning took place in September 2012.

Mr. Ruth clarified that although Ms. Copeland did not receive the certified letter, proper notification was accomplished because (as required by law) a notice was also posted on the property.

**Appeal Board Action ~ 4515 Armour**

Monroe, seconded by Chitwood, moved that the lien amount be reduced by the finance portion of the administrative fee of \$59.49 **(from \$299.89 to \$240.40)** and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members all voting aye, Chairperson Lewis declared the motion carried.

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

In order to ensure property owners see the notices posted on their property, Ms. Copeland recommended such be increased in size to 8 ½ x 11 and placed in a sleeve.

■ **Maria Bonilla and Genero Cabrera, interpreter  
Fort Smith, Arkansas**

**Property: 2223 Wirsing**  
**Owners: Dilbert and Maria Bonilla**  
**Cleaned: June 7, 2012 ~ \$333.59**

Inspector Dean Polk reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was first inspected on May 3, 2012 and a courtesy notice for overgrowth and dead limbs was provided. The property was again inspected on May 11, 2012 whereby such remained in violation; therefore, a letter was forwarded via first class mail to the property owner. The property was reinspected on May 18, 2012 and the violation again remained; therefore, formal notice was initiated with a certified letter forwarded to the property owners, but such was returned. The final inspection was conducted on May 25, 2012. The violation remained; therefore, the property was assigned to the contractor with abatement accomplished on June 7, 2012.

Mr. Cabrera, on behalf of Ms. Bonilla, addressed the Appeal Board citing she does not dispute the cleaning; however, requested leniency due to circumstances. The property was originally purchased by Dilbert and Maria Bonilla; however, they are now divorced and the property was placed solely in Maria's name after the subject cleaning took place. Due to such, the notices were being mailed to her ex-husband and he did not forward to her; therefore, she was unaware of the violations. Since Maria has obtained full ownership of the property, Mr. Cabrera alleged he mows the property on a regular basis and ensures the property remains in compliance.

**Appeal Board Action ~ 2223 Wirsing**

Raynor, seconded by Monroe, moved that the lien amount be reduced by the administrative fee of \$147.24 (**from \$333.59 to \$186.35**) and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members all voting aye, Chairperson Lewis declared the motion carried.

■ **Rhonda Royal  
Fort Smith, Arkansas**

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

**Property:** 714 North 8<sup>th</sup> Street  
**Owners:** Velma Kursh (deceased)  
**Cleaned:** May 8, 2012 ~ \$572.30  
September 24, 2012 ~ \$204.02

Inspector Dean Polk reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was first inspected on May 3, 2012 and a courtesy notice for overgrowth and dead limbs was provided. The property was again inspected on May 11, 2012 whereby such remained in violation; therefore, a letter was forwarded via first-class mail to the property owner. The property was reinspected on May 18, 2012 and the violation again remained; therefore, formal notice was initiated with a certified letter forwarded to the property owners, but such was returned. The final inspection was conducted on May 25, 2012. The violation remained; therefore, the property was assigned to the contractor with abatement accomplished on June 7, 2012.

The property was reinspected every thirty (30) days thereafter and was found again to be in violation on September 17, 2012; therefore, such was assigned to the contractor with abatement accomplished on September 24, 2012.

Ms. Royal addressed the Appeal Board advising her mother, Velma Kursh, passed away in January 2012. She advised her brother, Patrick Kursh, was previously responsible for maintenance of the property and conceded he failed to accomplish such; therefore, she does not dispute the cleaning in May. She assumed responsibility for maintenance of the property; therefore, with regard to the second cleaning in September, she alleges the neighbor mowed the property and she was in the process finding someone to remove the dead tree; however and in the meantime, the City removed the dead tree and limbs.

**Appeal Board Action ~ 714 North 8<sup>th</sup> Street**

Monroe, seconded by Culberson, moved that the lien for the cleaning on May 8, 2012 remain due in full (**\$572.30**), the lien for the cleaning on September 24, 2012 be reduced by the administrative fee of \$161.20 (**from \$204.02 to \$43.00**) and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members all voting aye, Chairperson Lewis declared the motion carried.

There being no further business to come before the Appeal Board, Monroe moved

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

that the hearing adjourn. The motion was seconded by Chitwood and the members all voting aye, Chairperson Lewis declared the motion carried and the hearing stood adjourned at 7:29 p.m.

**THURSDAY ~ SEPTEMBER 26, 2013**

The hearing was called to order by Karen Lewis, Chairperson, with the following members present: Karen Lewis, Scott Monroe, Megan Raynor and Joel Culberson; absent - Dolores Chitwood. A quorum was declared.

City staff in attendance were City Clerk Sherri Gard, Building Official Jimmie Deer, Neighborhood Services Supervisor Rick Ruth, and Inspectors Dean Polk, Randal Hicks, Kelly Hicks and Brandon Haynes.

Chairperson Lewis stated the purpose of the hearings, and then each member of the Appeal Board introduced themselves, advising of how long they have been property owners in Fort Smith. She further noted that appeal of any decision made by the Property Owners Appeal Board may be appealed to the Fort Smith Board of Directors at a public hearing to be held at 6:00 p.m., Tuesday, November 19, 2013 at the Fort Smith Public Schools Service Center at 3205 Jenny Lind Road.

The following property owners were present:

- **Pat Matlock**  
**Fort Smith, Arkansas**  
  
**Property: 443 North 40<sup>th</sup> Street**  
**Owners: Robert S. & Betty J. Pratt**  
**Cleaned: February 7, 2013 ~ \$275.14**

Inspector Randal Hicks reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was inspected on January 9, 2013 and posted for dead limbs, trash & debris and open storage. A letter via first-class mail was forwarded to the property

***Property Owners Appeal Board Public Hearings - September 25 & 26, 2013***

owner; however, such was returned marked "Return to Sender". The property was reinspected on January 17, 2013 and the violation remained; therefore, a certified letter was forwarded to the property owner and such was also returned marked "Return to Sender". A final inspection was conducted on February 4, 2013 whereby the violation remained; therefore, the property was assigned to the contractor with the violation abated on February 7, 2013.

Ms. Matlock advised she resides behind the subject property and noted she purchased said property from Robert and Betty Pratt in 1986 via a contract of sale. She alleged illegal dumping continually occurs on the property and further alleged such is from the tenants of a nearby apartment complex. Regardless, Ms. Matlock advised that because she has not paid the contract of sale in full, the property is not in her name and she cannot change the mailing address at the Sebastian County Assessor's Office. Due to such, she alleged proper notification was not provided citing she was unaware of the pending violations. The Pratt's have indicated they did not receive notice either.

There was brief discussion whereby it was determined the City has cleaned the property only one (1) time. Mr. Monroe conveyed such indicates Ms. Matlock has consistently maintained the property since execution of the contract of sale and feels such is merely a matter of "bad timing".

**Appeal Board Action ~ 443 North 40<sup>th</sup> Street**

Monroe, seconded by Culberson, moved that the lien reduced by the administrative fee of \$151.24 (**from \$275.14 to \$123.90**) and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members present all voting aye, Chairperson Lewis declared the motion carried.

■ **Clarence Smith  
Rudy, Arkansas**

**Property 1: 2813 Houston  
Owner: Clarence & Carol Smith  
Cleaned: March 26, 2013 ~ \$191.58**

**Property 2: southwest corner, North "P" Street & May Avenue  
Owner: Clarence U. Smith  
Cleaned: November 1, 2012 ~ \$272.71**

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

Regarding property at 2813 Houston, Inspector Kelly Hicks reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was inspected on February 11, 2013 and found to be in violation for dead limbs; therefore, a letter was forwarded to the property owner via first-class mail. The property was reinspected on February 18, 2013 whereby the violation remained; therefore, a certified letter was forwarded to the property owner, which was returned unclaimed. A final inspection was conducted on March 25, 2013 and the violation remained; therefore, the property was assigned to the contractor with abatement accomplished on March 26, 2013.

Mr. Smith addressed the Appeal Board advising he was receiving treatment for cancer and was *"in and out of the hospital"* during the aforementioned timeframe; therefore, he alleged no notification was provided. Regardless, he noted no trees are located on the property citing the neighboring property owner admits to placing the dead limbs across the property line. Mr. Smith confronted the neighbor regarding the matter and the neighbor agreed to remove the limbs. He was under the impression the matter was taken care of by the neighbor. Since the City provided before and after pictures, he does not dispute the matter; however, he requested leniency and possible reduction in fees.

With regard to the southwest corner of North "P" Street and May Avenue, Inspector Dean Polk reviewed the property file, presented video of inspections and provided before and after pictures of the abatement. The property was inspected in October 2012 for graffiti on semi-trucks parked on the subject property. A certified letter was forwarded to the property owner and was signed for on October 10, 2012. The property was reinspected on October 22, 2012 and the graffiti remained; therefore, the property was assigned to the contractor with abatement accomplished on November 1, 2012.

Mr. Smith alleged he and another individual removed the graffiti insisting the City's contractor did not accomplish the graffiti removal.

There was lengthy discussion regarding the matter whereby Mr. Smith spoke adamantly that a Neighborhood Services inspector visited the property while they were removing the graffiti.

Inspector Hicks recalled such, but noted the visit occurred on a previous graffiti removal at the same location soon after he

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

started working in Neighborhood Services, which was approximately three (3) years ago.

**Appeal Board Action ~ 2813 Houston and southwest corner of North "P" Street & May Avenue**

Raynor, seconded by Monroe, moved that the lien on 2813 Houston be reduced by the administrative fee of \$147.61 (**from \$191.58 to \$43.97**); and the lien for the southwest corner of North "P" Street and May Avenue remain due in full (**\$272.71**), and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members present all voting aye, Chairperson Lewis declared the motion carried.

■ **Tim Dunn  
Fort Smith, Arkansas**

**Property: 518 - 520 South 17<sup>th</sup> Street**  
**Owners: Trixie Thi Nguyen**  
**Cleaned: February 7, 2013 ~ \$239.84**

Inspector Kelly Hicks reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was inspected on January 10, 2013 and posted for dead limbs and trash & debris. A certified letter was forwarded to the property owner whereby such was signed by Tim Dunn on January 17, 2013. The property was reinspected on January 25, 2013 and the violation remained. The matter was discussed with the owner, who advised they would remove the dead limbs. The property was again inspected on February 5, 2013 whereby some of the dead limbs had been removed, but not all. Due to such, the property was assigned to the contractor with abatement accomplished on February 17, 2013.

Mr. Dunn addressed the Appeal Board advising his is now married to the owner, Trixie (Nguyen) Dunn. He extended much appreciation to Neighborhood Services citing he owns multiple properties in Fort Smith. Mr. Dunn advised he paid an individual to remove the remainder of the dead limbs while he was out of town. Unfortunately, said individual failed to do so; therefore, he did not wish to dispute the lien, but merely request a reduction citing he was out of town and had he known, he would've taken care of the matter.

**Appeal Board Action ~ 518 - 520 South 17<sup>th</sup> Street**

Culberson, seconded by Monroe, moved that the lien reduced by the finance portion of the administrative fee of \$59.49 (**from \$239.84 to \$180.35**) and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members present all voting aye, Chairperson Lewis declared the motion carried.

■ **Eresha Smith**  
**Fort Smith, Arkansas**

**Property: 2124 North 30<sup>th</sup> Street**  
**Owner: Michael S. Bray, Sr.**  
**Cleaned: May 17, 2012 ~ \$260.74**  
**May 31, 2012 ~ \$3,858.16 (demolition)**

Regarding the cleaning on May 17, 2012, Inspector Dean Polk reviewed the property file, presented video of inspections and provided before and after pictures of the cleaning. The property was inspected on March 29, 2012 and posted for overgrowth. A certified letter was forwarded to the property owner; however, such was returned "unclaimed" on April 23, 2012. The property was reinspected on May 1, 2012 whereby the violation remained; therefore, the property was assigned to the contractor with abatement accomplished on May 17, 2012.

With regard to the demolition on May 31, 2012, Building Official Jimmie Deer advised the issue has been ongoing since 2010. The owner is deceased and several family members have attempted to make the necessary repairs; however, the condition of the structure steadily declined and the Board of Directors declared such to be unsafe on April 3, 2012. Formal notice of the unsafe action was forwarded to the owner of record; however, such was returned unclaimed. The City solicited bids for the demolition whereby the structure was demolished on May 31, 2012.

Mrs. Eresha Smith, who submitted a written statement, advised the property originally belonged to her grandmother, who is deceased. The property has been handed down to several family members, but they too are now deceased; therefore, the property is now in probate. She and she and her husband currently maintain the property and are attempting to obtain ownership of the property in hopes of building a home on it in the future. Although she did not dispute the cleaning or

*Property Owners Appeal Board Public Hearings - September 25 & 26, 2013*

demolition, she requested the Appeal Board consider a reduction in costs.

**Appeal Board Action ~ 2124 North 30<sup>th</sup> Street**

Monroe, seconded by Raynor, moved that both liens remain due in full **(\$4,118.90)** and that same be forwarded to the Sebastian County Tax Collector for placing on the tax records. The members present all voting aye, Chairperson Lewis declared the motion carried.

There being no further business to come before the Property Owners Appeal Board, Culberson moved that the hearing adjourn. The motion was seconded by Monroe and the members present all voting aye, Chairperson Lewis declared the motion carried and the hearing stood adjourned at 7:34 p.m.

---

**Karen Lewis, Chairperson**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 16-15 OF THE FORT SMITH MUNICIPAL CODE  
CHANGING THE ANNUAL CUTOFF DATE FOR CONSIDERATION OF APPEAL  
FOR DELINQUENT PROPERTY CLEANUP LIENS**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY**

**OF FORT SMITH, ARKANSAS, THAT:**

**SECTION 1:** Sections 16-15(a), (i) and (j) of the Fort Smith Municipal Code are hereby amended to read as follows:

- (a) *Right of appeal. Any property owner who is ninety (90) days delinquent on the payment of abatement fees as of June 30 of each year shall have the right of review of such matters by the property owners appeal board in accordance with the procedures set forth in subsection (i) below.*
- (i) *Notice, hearing. After June 30 of each year, the city clerk shall send a notice to all property owners who are 90 days delinquent on abatement charges informing them that said charges are subject to collection through the property taxes of Sebastian County. The notice will include two (2) hearing dates during the month of September at which the property owner may appeal the charges to the appeal board. The appeal board will then make a recommendation to the board of directors on the disposition of each appeal.*
- (j) *Appeal to board of directors. The city clerk shall send to property owners who are 90 days delinquent on June 30 and who remain delinquent as of September 1 of each year written notice of the public hearing before the board of directors in accordance with the provisions set forth in section 16-11 of this Code.*

**SECTION 2:** The codifier of the Fort Smith Municipal Code shall codify the provisions of this ordinance as noted above.

**THIS ORDINANCE ADOPTED** this 19<sup>th</sup> day of November, 2013.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

Approved as to form:



\_\_\_\_\_  
Publish one time

## MEMORANDUM

To: Ray Gosack, City Administrator  
From: Sherri Gard, City Clerk  
Date: November 15, 2013  
Re: Cutoff for Appeal of Delinquent Property Cleanup Liens

Per the Fort Smith Municipal Code, property owners are provided the opportunity for appeal of property cleanup liens that are 90 days delinquent as of July 15 of each year.

In order to determine and notify property owners who are eligible to appeal said liens, City Clerk staff must obtain accounts receivable reports, which are provided with information through the month-end. Each year, a special report must be requested to ensure inclusion of cleanup liens that have become 90 days delinquent from July 1 through July 15. To remove necessity of the special report, staff recommends the cutoff/delinquency date be amended from July 15 to June 30.

The Property Owners Appeal Board reviewed the proposed amendment on September 9, 2013 and voted unanimously (5 in favor, 0 opposed) to recommend such to the Board of Directors for consideration.

An ordinance has been prepared to accomplish the proposed amendment and is presented for Board consideration.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 2-26 OF THE  
FORT SMITH MUNICIPAL CODE SETTING THE DATES, TIME AND  
LOCATION FOR REGULAR MEETINGS OF THE BOARD OF DIRECTORS  
FOR THE YEAR 2014**

---

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE  
CITY OF FORT SMITH, ARKANSAS, THAT:**

**SECTION 1:** Section 2-26 of the Fort Smith Municipal Code is hereby amended to read as follows:

In 2014, all regular meetings of the Fort Smith Board of Directors shall be held at 6:00 p.m. at the Fort Smith Public Schools Service Center, Building B, 3205 Jenny Lind Road, on the first and third Tuesday evenings of each month.

**THIS ORDINANCE ADOPTED** this 19<sup>th</sup> day of November, 2013.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

Approved as to form:



\_\_\_\_\_  
Publish one time

## MEMORANDUM

To: Ray Gosack, City Administrator  
From: Sherri Gard, City Clerk  
Date: November 15, 2013  
Re: 2014 Regular Meetings of the Board of Directors

At the November 12, 2013 study session, the Board concurred to retain the first and third Tuesday of each month for all regular meetings in 2014. There are no holidays in 2014 that conflict any scheduled regular meeting dates.

As required by law, the attached ordinance accomplishes the aforementioned and formally sets the dates, time and location for all regular meetings in 2014.

No formal action is required with regard to study session dates; however, because Tuesday, November 11, 2014 is Veterans Day and City offices are closed, the Board concurred to reschedule said study session for Monday, November 10, 2014.

In order to allow members of the Board to plan vacations without having to be absent from a scheduled meeting, the Board also concurred to forego holding study sessions on Tuesday, March 25; June 24; September 30; November 25; and, December 23, 2014.

At the November 12, 2013 study session, the Board also scheduled the following:

**2014 Brainstorming Meetings**

Monday, February 24  
Tuesday, May 27  
Monday, August 25  
Monday, October 27

**2014 Budget Hearings**

Thursday, November 13  
Monday, November 17

The 2014 Board Meeting Calendar has been updated with all of the above and is attached for your review.

# 2014 BOARD MEETING CALENDAR

**~ January 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
		1 ~ CLOSED ~ NEW YEAR'S DAY	2	3	4	
5	6	7 REGULAR MEETING	8	9	10	11
12	13	14 STUDY SESSION	15	16	17	18
19	20 ~ CLOSED ~ MARTIN L. KING, JR. DAY	21 REGULAR MEETING	22	23	24	25
26	27	28 STUDY SESSION	29	30	31	Notes:

**~ February 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
						1
2	3	4 REGULAR MEETING	5	6	7	8
9	10	11 STUDY SESSION	12	13	14	15
16	17	18 REGULAR MEETING	19	20	21	22
23	24 BRAINSTORM MEETING	25 STUDY SESSION	26	27	28	Notes:

**~ March 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
						1
2	3	4 REGULAR MEETING	5	6	7	8
9	10	11 STUDY SESSION	12	13	14	15
16	17	18 REGULAR MEETING	19	20	21	22
23	24	25 NO STUDY SESSION	26	27	28	29
~ SPRING BREAK ~						
30	31	Notes:				

**~ April 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
		1 REGULAR MEETING	2	3	4	5
6	7	8 STUDY SESSION	9	10	11	12
13	14	15 REGULAR MEETING	16	17	18 ~ CLOSED ~ GOOD FRIDAY	19
20	21	22 STUDY SESSION	23	24	25	26
27	28	29 STUDY SESSION ~ TENTATIVE ~	30	Notes:		

**~ May 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
				1	2	3
4	5	6 REGULAR MEETING	7	8	9	10
11	12	13 STUDY SESSION	14	15	16	17
18	19	20 REGULAR MEETING	21	22	23	24
25	26 ~ CLOSED ~ MEMORIAL DAY	27 STUDY SESSION BRAINSTORM MEETING	28	29	30	31

**~ June 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
1	2	3 REGULAR MEETING	4	5	6	7
8	9	10 STUDY SESSION	11	12	13	14
15	16	17 REGULAR MEETING	18	19	20	21
22	23	24 NO STUDY SESSION	25	26	27	28
29	30	Notes:				

**~ July 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
		1 REGULAR MEETING	2	3	4 ~ CLOSED ~ INDEPENDENCE DAY	5
6	7	8 STUDY SESSION	9	10	11	12
13	14	15 REGULAR MEETING	16	17	18	19
20	21	22 STUDY SESSION	23	24	25	26
27	28	29 STUDY SESSION ~ TENTATIVE ~	30	31	Notes:	

**~ August 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
					1	2
3	4	5 REGULAR MEETING	6	7	8	9
10	11	12 Primary Election STUDY SESSION	13	14	15	16
17	18	19 REGULAR MEETING	20	21	22	23
24	25 BRAINSTORM MEETING	26 STUDY SESSION	27	28	29	30
31	Notes:					

**~ September 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
	1 ~ CLOSED ~ LABOR DAY	2 REGULAR MEETING	3	4	5	6
7	8	9 STUDY SESSION	10	11	12	13
14	15	16 REGULAR MEETING	17	18	19	20
21	22	23 STUDY SESSION	24	25	26	27
28	29	30 NO STUDY SESSION	Notes:			

**~ October 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
			1	2	3	4
5	6	7 REGULAR MEETING	8	9	10	11
12	13	14 STUDY SESSION	15	16	17	18
19	20	21 REGULAR MEETING	22	23	24	25
26	27 BRAINSTORM MEETING	28 STUDY SESSION	29	30	31	Notes:

**~ November 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
						1
2	3	4 General Election REGULAR MEETING	5	6	7	8
9	10 STUDY SESSION	11 ~ CLOSED ~ VETERANS DAY	12	13 2014 BUDGET HEARING	14	15
16	17 2014 BUDGET HEARING	18 REGULAR MEETING	19	20	21	22
23	24	25 NO STUDY SESSION	26	27 ~ CLOSED ~ THANKSGIVING	28 ~ CLOSED ~ THANKSGIVING	29
30	Notes:					

**~ December 2014 ~**

SUN	MON	TUES	WED	THUR	FRI	SAT
		1 REGULAR MEETING	2	3	4	5
6	7	8 STUDY SESSION	9	10	11	12
13	14	15 REGULAR MEETING	16	17	18	19
20	21	22 NO STUDY SESSION	23 ~ CLOSED ~ CHRISTMAS	24 ~ CLOSED ~ CHRISTMAS	25	26
27	28	29 STUDY SESSION ~ TENTATIVE ~	30	Notes:		

RESOLUTION NO. \_\_\_\_\_

5

RESOLUTION AUTHORIZING PARTIAL PAYMENT TO ARCHER WESTERN CONSTRUCTION, LLC FOR THE CONSTRUCTION OF THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS-PUMP STATION AND EQ STORAGE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Partial payment number six to Archer Western Construction, LLC in the amount of \$973,415.65, for the construction of the Zero Street Pump Station Wet Weather Improvements-Pump Station and EQ Storage, Project Number 09-17-C2, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of November 2013.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Ray Gosack, City Administrator

**DATE** November 12, 2013

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Zero Street Pump Station Wet Weather Improvement-  
Pump Station and EQ Storage, Project Number 09-17-C2

Archer Western Construction LLC has submitted partial pay request number six in the amount of \$973,415.65 for work completed on the above captioned project. Work is progressing on schedule and a project summary sheet is attached for your information. Major items of work completed to date are as follows:

- Excavation North and South EQ Tanks & PS (100% complete)
- South Tank Base Rebar and Forming (100% complete)
- North Tank Base Rebar and Forming (100% complete)
- Tank Panel Concrete Pour (100% complete)
- Tank Dome Support Scaffolding (100% complete)
- Pump Station Concrete Base Poured (100% complete)
- Rebar for Pump Station Walls (50% complete)
- Pump Station Concrete Wall Pour (20% complete)
- Sewer Main (90% complete)
- Form Work for Tank Walls (100% complete)
- Rebar for Bar Screen Base (100% complete)
- South & North Tank Dome and Wall Panels (100% complete)
- South Tank Shotcrete (10% complete)

The attached Resolution authorizes the partial payment to Archer Western Construction LLC. Should you or members of the Board have any questions or need additional information, please let me know.

attachment

pc: Jeff Dingman

## Project Summary

Project status: Under construction

Project name: Zero Street Pump Station Wet Weather Improvements-  
Pump Station and EQ Storage

Today's date: November 12, 2013

Project number: 09-17-C2

Staff contact name: Steve Parke

Project engineer: Hawkins-Weir Engineers, Inc.

Staff contact phone: 784-2231

Project contractor: Archer Western Construction LLC

Notice to proceed issued: May 13, 2013

Final Completion date: May 2, 2015

	Dollar Amount	Contract Time (Days)
Original contract	\$12,193,000.00	660
Change orders:		
Total change orders	<u>\$0.00</u>	
Adjusted contract	\$12,193,000.00	
Payments to date (as negative):	-\$4,225,329.42	
Amount of this payment	\$973,415.65	
Retainage held	\$251,499.26	
Contract balance remaining	\$6,994,254.93	
Amount over original as a percentage		

Final comments: 41% of contract complete, 19% of time expended



MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: November 14, 2013

SUBJECT: Fort Smith Municipal Employees Benevolent Fund Board of Advisors

Ms. Rhonda Harper of the Fort Smith Municipal Employees Benevolent Fund Board of Advisors has resigned October 4, 2013, this vacancy will need to be appointed.

The applicant available at this time is:

April Byrd

PO Box 396

Appointments are **by the Board of Directors**, one appointment is needed. The term will expire June 30, 2016.

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430

FORT SMITH MUNICIPAL EMPLOYEES BENEVOLENT FUND BOARD OF ADVISORS

The Fort Smith Municipal Employee’s Benevolent Fund was established December 23, 1991. The fund provides for a trust fund to be used to provide emergency assistance to the employees of the City of Fort Smith and their immediate families, including immediate families of deceased employees of the various city departments whenever such employees or their immediate families sustain extraordinary expenses (including, but not limited to: housing, clothing, food, educational, medical and dental expenses). Distributions from the fund shall be at the discretion of the Board of Advisors of the fund.

The Board of Advisors consists of nine persons as follows: two members of the Police Department, two members of the Fire Department, two members of other city departments, and two other adults who are citizens of the City of Fort Smith. The Mayor serves as a member , ex-officio, and presides at meetings of the Board of Advisors. Members of the Board of Advisors are appointed by the Board of Directors. (Three year terms).

	<u>DATE APPOINTED</u>	<u>TERM EXPIRES</u>
<u>Police Department Representatives:</u>		
Barbara Williams 7113 South T Street (03) 414-3545 (h) 709-5155 (w) <a href="mailto:bwilliams@fortsmithpd.org">bwilliams@fortsmithpd.org</a>	05/15/12	06/30/15
Jamie Hammond 705 Lost Bridge (72956) 410-1204 (h) 709-5119 (w) <a href="mailto:jhammond@fortsmithpd.org">jhammond@fortsmithpd.org</a>	05/21/13	06/30/16

Fire Department Representatives:

Ronnie Rogers 1512 North 43 (04) 883-3131 (h) 783-4052 (w) <a href="mailto:rrogers@fortsmithar.gov">rrogers@fortsmithar.gov</a>	05/15/12	06/30/15
---	----------	----------

Teddy Abbey 1505 Quebec Dr (08) 649-8574 (h) 783-4052 (w) <a href="mailto:tabbey@fortsmithar.gov">tabbey@fortsmithar.gov</a>	05/21/13	06/30/16
--	----------	----------

Other City Department Representatives:

Sonya Elliott 604 Jessie Drive Lavaca, AR 72941 784-2225 (w) <a href="mailto:selliott@fortsmithar.gov">selliott@fortsmithar.gov</a>	05/17/11	06/30/14
---	----------	----------

Rhonda Harper 431 Poteau St. (74901) 651-8544 (h) 709-5027 (w)	05/21/13	06/30/16
---	----------	----------

Citizen Representatives:

Mary C. Moore UAMS 3424 No. 27 Street (04) 424-3960 (w) 434-3658 (h) <a href="mailto:mcmoore@uams.edu">mcmoore@uams.edu</a>	06/21/11	06/30/14
--	----------	----------

Larry Murry Esquire 3000 Blackburn (03) 783-8984 (w) 783-8858 (h) <a href="mailto:larrymurry@att.net">larrymurry@att.net</a>	08/20/02	06/30/14
---	----------	----------





MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: November 14, 2013

SUBJECT: Oak Cemetery Commission

The terms of Ms. Pam Weiler, Mr. Joseph Irwin and Mr. Joel Scott Stubblefield of the Oak Cemetery Commission will expire November 30, 2013. Ms. Weiler, Mr. Irwin and Mr. Stubblefield wishes to be reappointed to this commission.

There are no other applicants available at this time.

Appointments are **by the Board of Directors**, three appointment are needed. The term will expire November 30, 2016.

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430

### Oak Cemetery Commission

The Oak Cemetery Commission acts in an advisory capacity to the Board of Directors and the City Administrator in the planning, maintenance, development and operation of the cemetery.

The Commission consists of nine members who shall initially serve one, two and three-year terms. Thereafter, members shall serve three-year terms. The Oak Cemetery Commission is appointed by the Board of Directors. The Commission meets on call.

	<u>Date Appointed</u>	<u>Term Expires</u>
Pam Weiler 2207 South 73 Street (3) 452-4952 (h) 788-6494 (w) pweiler@wingfootct.com	11/21/01	11/30/13
Joseph S. Irwin 2024 South 69 Street (03) 452-2768 (h) <a href="mailto:joeirwin@juno.com">joeirwin@juno.com</a>	08/17/04	11/30/13
Joel Scott Stubblefield 812 South 24 Street (01) 918-816-0128 (w) castle.camps@yahoo.com	11/20/07	11/30/13
Phanita Williams 23 Haven Drive (1) 783-3793 (h)	03/17/09	11/30/14
Carole Barger 3007 Independence (01) 646-9140 (h) <a href="mailto:carlann34@cox.net">carlann34@cox.net</a>	11/18/03	11/30/15
Charles Girard First National Bank 7510 Westminister Place (03) 484-1500 (h) 788-4211 (w) <a href="mailto:Chuck.Girard@sbcglobal.net">Chuck.Girard@sbcglobal.net</a>	06/21/11	11/30/15

Reginald Moore  
Deputy Circuit Clerk  
2405 N 53 Street (04)  
561-6519 (h)  
441-1310 (2956)  
[rmoore@co.sebastian.ar.us](mailto:rmoore@co.sebastian.ar.us)

11/20/12

11/30/15

**CITY OF FORT SMITH**  
**Application for City Boards/Commissions/Committees**

**Note:** As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 10-10-13

Name: DAM WEILER Home Telephone: 432-4952

Home Address: 2209 S. 73<sup>rd</sup> Work Telephone: 788-6494

Zip: 72903 Email: DWEILER@WINGFOOTCT.COM

Occupation: LA/O PAYABLE  
 (If retired, please indicate former occupation or profession)

Education: COLLEGE

Professional and/or Community Activities: PREVIOUSLY LISTED

Additional Pertinent Information/References: \_\_\_\_\_

Are you a registered voter in the City of Fort Smith? Yes  No

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?  
 Yes \_\_\_\_\_

If yes, please indicate the date. A "yes" answer will include you from consideration \_\_\_\_\_

Drivers License \_\_\_\_\_ Date of Birth \_\_\_\_\_ (This information will be used for a background sound check of all applicants)

I am interested in \_\_\_\_\_

- |   |  |
|---|--|
| <input type="checkbox"/> Audit Committee                          | <input type="checkbox"/> Housing Authority                           |
| <input type="checkbox"/> Advertising & Promoting Commission       | <input type="checkbox"/> Library Bd of Trustees                      |
| <input type="checkbox"/> Airport Commission                       | <input type="checkbox"/> Mechanical Bd of Adjustments and Appeals    |
| <input type="checkbox"/> Animal Services Advisory Board           | <input checked="" type="checkbox"/> Oak Cemetery Commission          |
| <input type="checkbox"/> Arkansas Fair & Exhibition Facilities Bd | <input type="checkbox"/> Outside Agency Review Panel                 |
| <input type="checkbox"/> Benevolent Fund Board                    | <input type="checkbox"/> Parking Authority                           |
| <input type="checkbox"/> Bldg. Bd. Of Adjustment and Appeals      | <input checked="" type="checkbox"/> Parks & Recreation Commission    |
| <input type="checkbox"/> Central Business Improvement District    | <input type="checkbox"/> Planning Commission                         |
| <input type="checkbox"/> Comprehensive Plan Steering Committee    | <input type="checkbox"/> Plumbing Advisory Board                     |
| <input type="checkbox"/> Convention Center Commission             | <input type="checkbox"/> Port Authority                              |
| <input type="checkbox"/> Civil Service Commission                 | <input type="checkbox"/> Property Owners Appeals Board               |
| <input type="checkbox"/> Community Development Advisory Com.      | <input type="checkbox"/> Sebastian County Reg. Solid Waste Mgmt. Bd. |
| <input type="checkbox"/> County Equalization Board                | <input type="checkbox"/> Sister Cities Committee                     |
| <input type="checkbox"/> Electric Code Board of Appeals           | <input type="checkbox"/> Transit Advisory Commission                 |
| <input type="checkbox"/> Fire Code Board of Appeals & Adjustments | <input type="checkbox"/> Residential Housing Facilities Board        |
| <input type="checkbox"/> Historic District Commission             |  |
| <input type="checkbox"/> Housing Assistance Board                 |  |

\* WENDY - NOTE THAT I WOULD ALSO LIKE TO WORK ON PARKS & RECREATION WHEN POSITION OPENS

**CITY OF FORT SMITH**  
**Application for City Boards/Commissions/Committees**

**Note:** As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 15 October 2013  
 Name: Joseph S. Irwin Home Telephone: 479/653-3425 cel  
 Home Address: 2024 South 69<sup>th</sup> St. Work Telephone: 479/452-2768  
 Zip: 72903-4033 Email: joeirwin@juno.com  
 Occupation: Retired from Texas State Hwy Department  
 (If retired, please indicate former occupation or profession)  
 Education: 4 Years University of Arkansas  
 Professional and/or Community Activities: Noon Civics Club  
Fort Smith Trolley Driver AARP Tax-aide (16 Years)  
 Additional Pertinent Information/References: Board on Clayton House  
Sparks Volunteer (10 years)

Are you a registered voter in the City of Fort Smith? Yes  No   
 Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?  
 Yes  NO   
 If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers License [redacted] Date of Birth [redacted] This information will be use to [redacted] check of all applicants).

I am interested in serving on the (please check):

- |   |  |
|---|--|
| <input type="checkbox"/> Audit Committee                          | <input type="checkbox"/> Housing Assistance Board <input type="checkbox"/> |
| <input type="checkbox"/> Advertising & Promoting Commission       | Housing Authority  |
| <input type="checkbox"/> Airport Commission                       | <input type="checkbox"/> Library Bd of Trustees                            |
| <input type="checkbox"/> Animal Services Advisory Board           | <input type="checkbox"/> Mechanical Bd of Adjustments and Appeals          |
| <input type="checkbox"/> Arkansas Fair & Exhibition Facilities Bd | <input checked="" type="checkbox"/> Oak Cemetery Commission                |
| <input type="checkbox"/> Benevolent Fund Board                    | <input type="checkbox"/> Outside Agency Review Panel                       |
| <input type="checkbox"/> Bldg. Bd. Of Adjustment and Appeals      | <input type="checkbox"/> Parking Authority                                 |
| <input type="checkbox"/> Central Business Improvement District    | <input type="checkbox"/> Parks & Recreation Commission                     |
| <input type="checkbox"/> Comprehensive Plan Steering Committee    | <input type="checkbox"/> Planning Commission                               |
| <input type="checkbox"/> Convention Center Commission             | <input type="checkbox"/> Plumbing Advisory Board                           |
| <input type="checkbox"/> Civil Service Commission                 | <input type="checkbox"/> Port Authority                                    |
| <input type="checkbox"/> Community Development Advisory Com.      | <input type="checkbox"/> Property Owners Appeals Board                     |
| <input type="checkbox"/> County Equalization Board                | <input type="checkbox"/> Sebastian County Reg. Solid Waste Mgmt. Bd.       |
| <input type="checkbox"/> Electric Code Board of Appeals           | <input type="checkbox"/> Sister Cities Committee                           |
| <input type="checkbox"/> Fire Code Board of Appeals & Adjustments | <input type="checkbox"/> Transit Advisory Commission                       |
| <input type="checkbox"/> Historic District Commission             | <input type="checkbox"/> Residential Housing Facilities Board              |

Please return this form to Wendy Beshears, P.O. Box 1908, FSM, AR 72902

15 October 2013

Joseph S. Irwin

**CITY OF FORT SMITH**  
**Application for City Boards/Commissions/Committees**

**Note:** As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Name: J. SCOTT STUBBLEFIELD Date: 10/20/13  
 Home Telephone: 431-8514  
 Address: 812 SOUTH 24TH Work Telephone: 784-1502  
 Zip: 72901 Email: 1ccjacks@Yahoo.com  
 Occupation: ASSISTANT COUNTY ADMINISTRATOR  
 (If retired, please indicate former occupation or profession)  
 Education: COLLEGE DEGREES (2 & 4)  
 Professional and/or Community Activities: BOY SCOUTS COACH, CURRENTLY ON  
OAK CEMETERY COMMISSION  
 Additional Pertinent Information/References: MIKE ALSOP, AARON LEE

Are you a registered voter in the City of Fort Smith? Yes  No

Drivers License [REDACTED] Date of Birth [REDACTED]  
 (This information will be used for a background check of all applicants.)

I am interested in serving on the (please check):

- |  |  |
|--|--|
| <input type="checkbox"/> Audit Committee                               | <input type="checkbox"/> Housing Authority                           |
| <input type="checkbox"/> Advertising & Promotion Commission            | <input type="checkbox"/> Library Board of Trustees                   |
| <input type="checkbox"/> Airport Commission                            | <input type="checkbox"/> Mechanical Board of Adjustments and Appeals |
| <input type="checkbox"/> Arkansas Fair And Exhibition Facilities Board | <input checked="" type="checkbox"/> <u>Oak Cemetery Commission</u>   |
| <input type="checkbox"/> Benevolent Fund Board                         | <input type="checkbox"/> Parking Authority                           |
| <input type="checkbox"/> Central Business Improvement District         | <input type="checkbox"/> Parks & Recreation Commission               |
| <input type="checkbox"/> Convention Center Commission                  | <input type="checkbox"/> Planning Commission                         |
| <input type="checkbox"/> Civil Service                                 | <input type="checkbox"/> Plumbing Advisory Board                     |
| <input type="checkbox"/> Community Development Advisory Committee      | <input type="checkbox"/> Port Authority                              |
| <input type="checkbox"/> County Equalization Board                     | <input type="checkbox"/> Property Owners Appeals Board               |
| <input type="checkbox"/> County Equalization Board                     | <input type="checkbox"/> Sebastian County Reg. Solid Waste Mgmt      |
| <input type="checkbox"/> Electric Code Board of Appeals                | <input type="checkbox"/> Sister Cities Committee                     |
| <input type="checkbox"/> Fire Code Board of Appeals & Adjustments      | <input type="checkbox"/> Solid Waste Task Force                      |
| <input type="checkbox"/> Historic District Commission                  | <input type="checkbox"/> Transit Advisory Commission                 |
| <input type="checkbox"/> Housing Assistance Board                      | <input type="checkbox"/> Residential Housing Facilities Bd           |

Please return this form to:  
 Wendy Beshears, P.O. Box 1908, Fort Smith, AR 72902



November 5, 2013

TO: Members of the Board of Directors  
Members of the Library Board of Trustees

RE: Appointments:

The term of Mr. Brian DeLung of the Library Board of Trustees will expire December 31, 2013. In accordance with Ordinance No. 2926 applications for these prospective vacancies are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrator's office no later than the close of business on December 6th, 2013. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in blue ink that reads "Ray Gosack".

Ray Gosack  
City Administrator

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430



November 12, 2013

TO: Members of the Board of Directors  
Members of the Transit Advisory Commission

RE: Appointments:

The term of Mr. Charles Mills of the Transit Advisory Commission has passed away. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrator's office no later than the close of business on December 6th, 2013. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in blue ink that reads "Ray Gosack".

Ray Gosack  
City Administrator

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430